

***United States Court of Appeals
for the Second Circuit***



APPENDIX

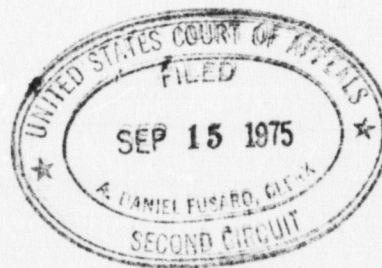
75-7232

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In the Matter of :
JAMES ANTHONY & CO., INC., :
Bankrupt, :
WEIL, GOTSHAL & MANGES, ESQS., :
Appellant. :
-----x

Docket No. 75-7232



APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
March 21, 1969	Hearing in action entitled Securities & Exchange Commission v. James Anthony & Co., Inc.
June 20, 1969	Chapter XI Petition filed by James Anthony & Co., Inc.
July 15, 1969	Order retaining Seligson & Morris as counsel to Chapter XI Receiver.
December 24, 1969	Order substituting Weil, Gotshal & Manges as attorneys for Chapter XI Receiver.
February 3, 1970	Order adjudging James Anthony & Co., Inc. a bankrupt.
February 1, 1974	Seligson & Morris application for allowance filed.
February 1, 1974	Weil, Gotshal & Manges application for allowance filed.
December 5, 1974	Certificate of Bankruptcy Judge John J. Galgay filed authorizing interim and final allowances pursuant to Rule 16(c) of the Bankruptcy Rules.
January 9, 1975	Order of District Judge Charles M. Metzner returning matter to Bankruptcy Judge for further hearing.
February 26, 1975	Amended Certificate of Bankruptcy Judge John J. Galgay authorizing interim and final allowances pursuant to Rule 16(c) of the Bankruptcy Rules.

Relevant Docket Entries

<u>Date</u>	<u>Proceedings</u>
March 3, 1975	Order of District Judge Charles M. Metzner approving recommended allowances in Amended Certificate (order appealed from).
March 20, 1975	Appellant's motion for hearing and reconsideration of order of March 3, 1975.
April 2, 1975	Notice of Appeal from order of March 3, 1975.
April 7, 1975	Order filed denying motion for rehearing and reconsideration.

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THE COURT: I think the first order of business that would be most helpful to me is a briefing, and a sort of status report so that I can become current on this matter. Then we can discuss any other business that appears to be relevant.

MR. LIMAN: I have outlined, and I am prepared to give your Honor a State of the Union message here.

I should start, really, by telling your Honor something about the brokerage house. James Anthony & Co., Inc. is one of the largest over-the-counter houses in New York. It appeared to do trades of \$1 million a day, and yet its records are in a state that can only be characterized as unbelievable.

The Peat Marwick firm, at the request of Mr. Collins, took a look at the records of James Anthony & Co., and said to me that in all of their years of auditing they have never come across a situation as bad as this.

The last trial balance on the records of James Anthony was run in November of 1967. That was their last audit and they haven't done a trial balance since then.

March 21, 1969 Hearing in S.E.C. v. James Anthony & Co., Inc.

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It is impossible to determine from those records how much Anthony owes, how much is owed to Anthony, what securities they have that might be out in other houses. It is sheer chaos.

THE COURT: May I interrupt you for a moment.

How long did these conditions persist that you have just described, as best they can be determined?

MR. LIMAN: As best as we can determine there wasn't a trial balance run for over a year. The accountant that represented them claims to be owed \$18,000, and so they weren't even paying their accountant to keep it up. As best we can tell, the house simply had not been keeping records since the over-the-counter market really got heated in the last year.

It just gave up on the business of trying to keep current books.

THE COURT: I hate to interrupt this continually, but I think I would like to get these points down while I have them fresh in mind.

Where was the SEC all this time?

March 21, 1969 Hearing in S.E.C. v. James Anthony & Co., Inc.
mdb

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We were immediately retained as attorneys, and after speaking to your Honor on March 4, 1969, we retained Professor Seligson of the firm of Seligson & Morris to render advice to us on the possibilities of bankruptcy and other matters relating to this field of specialty.

We also retained, beginning with the week of March 10, five employees to attempt to sort out the records of Anthony and to try to bring some order to the situation that we found there. We discovered, in trying to get employees, that the wages that you had to pay were extremely high, that it was almost impossible to find people willing to undertake this job because this is a job that will come to an end soon and has no future.

At the recommendation of the SEC, which we were appreciative of, we found two former SEC investigators, people who were familiar with record-keeping in Wall Street, and top men at this, men by the name of Bradicich and Darby. Their price was \$150 a day, and despite the fact that it was such an excessive, such an extremely high amount, we thought that it was advisable, at least for

APPELLANT'S APPLICATION FOR ALLOWANCE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Bankruptcy No.
JAMES ANTHONY & CO., INC., : 69 B 425
Bankrupt. :
-----x

APPLICATION FOR FINAL ALLOWANCE
OF COMPENSATION FOR ATTORNEYS
FOR RECEIVER

TO THE HONORABLE JOHN J. GALGAY, BANKRUPTCY JUDGE:

The application of WEIL, GOTSHAL & MANGES for the final allowance of compensation as attorneys for the Receiver, respectfully represents as follows:

A. PRELIMINARY STATEMENT

1. Applicants are the counsel employed and appointed by John T. Collins in his capacity as Receiver of all of the above-named bankrupt during the course of the superseded arrangement proceedings, as successor to the law firm of SELIGSON & MORRIS.

2. On February 28, 1969, John T. Collins was appointed a Receiver of all of the assets and properties owned, beneficially or otherwise, by James Anthony & Co., Inc. (the "bankrupt"), in an action then pending in the

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United States District Court for the Southern District of New York entitled "Securities and Exchange Commission v. James Anthony & Co., Inc. and Samuel Nasciello".

3. Mr. Collins acted as Equity Receiver until July 3, 1969. Theretofore and on or about June 20, 1969, the bankrupt filed with this Court its petition for an arrangement under and pursuant to Chapter XI of the Bankruptcy Act. On July 3, 1969, Mr. Collins was appointed as Receiver of the bankrupt, then a Chapter XI debtor, pursuant to order of the Honorable Constances Baker Motley, United States District Judge.

4. Applicant notes that between July 3, 1969 and December 1, 1969, the Receiver was represented in these proceedings under a general retainer by the law firm of SELIGSON & MORRIS pursuant to an order of this Court dated July 15, 1969.

5. Prior to December 1, 1969 and pursuant to arrangements between them, two former partners of the law firm of SELIGSON & MORRIS and two associates of that firm agreed to become members and associates of Applicant. As a consequence, on December 1, 1969, Professor Charles Seligson became counsel to Applicant. Likewise, on that date, Harvey R. Miller became a member of Applicant. Two former associates of SELIGSON & MORRIS, Alan B. Miller and William R. Fabrizio became associates of Applicant on December 1, 1969.

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6. Shortly thereafter John T. Collins, as Receiver of the above-named bankrupt (then a debtor) applied to this Court for authority to substitute the law firm of WEIL, GOTSHAL & MANGES as counsel to said Receiver in the place and stead of the law firm of SELIGSON & MORRIS.

7. As a result of the foregoing, there was no interruption whatsoever in the services which had been rendered to the Receiver prior to December 1, 1969 inasmuch as the identical individual attorneys continued to render services to the Receiver following December 1, 1969.

B. THE SERVICES RENDERED

3. Applicant respectfully notes that an Application for the final allowance of compensation and reimbursement of disbursements has been filed herein by the law firm of SELIGSON & MORRIS. Applicant also notes that the Application of SELIGSON & MORRIS sets forth in detail, the services which were rendered to the Receiver by the firm of SELIGSON & MORRIS. In view of the fact that the Application of SELIGSON & MORRIS completely sets forth and analyzes the services which that firm rendered to the Receiver herein, and in view of the fact that the services which Applicant rendered were a continuation of the services which were being rendered by SELIGSON & MORRIS for a relatively brief period after the substitution, Applicant respectfully

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requests leave of this Court to omit a duplication of the detailed statement and analysis of services rendered; and respectfully begs leave of this Court to incorporate herein by reference the Application for allowance of SELIGSON & MORRIS as though said facts and circumstances were set forth at length herein.

9. Following December 1, 1969, Applicant continued the investigation which had been undertaken by the law firm of SELIGSON & MORRIS; and Applicant also continued the efforts to reduce the cash and liquidate the assets and accounts receivable of the above-named bankrupt. Although Referee Loewenthal had announced his intention to adjudicate the debtor a bankrupt, which announcement occurred during the latter part of November 1969, Applicant continued to render services to the Receiver as required since the adjudication was not yet an accomplished fact.

10. Following the adjudication herein, Applicant was required to marshal its entire set of files in connection with this case so as to turn over to the Trustee in Bankruptcy and his general and special counsel, all of the facts, information, documents and other materials which said Trustee would require in order to continue the administration of this case. The task of the turnover was an extremely time consuming effort and resulted in a 19 page letter report from Applicant to the Trustee in Bankruptcy

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together with a turnover of all related documentation.

Applicant met and conferred with counsel for the Trustee in an effort to review and analyze with him the complex and manifold issues which remained to be resolved by the Trustee.

11. In addition to the services rendered to the Receiver which are described in that letter, a copy of which is annexed hereto as Exhibit "A", Applicant was also required to assist the Receiver in the completion of his functions by turning over to the Trustee in Bankruptcy approximately \$600,000 in cash and an inventory of securities having a value approximately \$370,000. The cash and securities were physically turned over to the Trustee in Bankruptcy under Applicant's supervision; and the Trustee in Bankruptcy and the Receiver inventoried the securities under Applicant's supervision and the supervision of the Trustee's counsel.

12. Applicant assisted the Receiver in preparing his Final Report, Accounting and Application for Allowance. Ordinarily the task of preparing a Receiver's Report is a relatively simple one and one which does not require a substantial amount of assistance by counsel. However, the Report in this case encompassed an Equity Receivership which lasted from February 28, 1969 through June 20, 1969, the date upon which the Chapter XI proceedings commenced. The Receiver's Report also encompassed the entire Chapter XI proceeding which covered the period from June 20, 1969

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through and including February 2, 1970. Applicant respectfully notes that the Receiver's Report is approximately twenty-seven pages long (not including the exhibits and schedules) which was necessitated by reason of the fact that the two Receiverships lasted nearly one year.

13. In addition thereto, Applicant also notes that it appeared as attorney for the Receiver in connection with the Petition of the Trustee in Bankruptcy dated April 15, 1970. In connection with said Petition, Applicant filed an Answer on behalf of the Accountants for the Receiver. Applicant also attended a hearing on the Petition and the matter was finally resolved by agreement among the parties.

C. AMOUNT OF COMPENSATION

14. The Application of SELIGSON & MORRIS which is incorporated herein by reference sets forth all of the traditional standards for the measurement of compensation rendered in the Chapter XI proceedings and in other proceedings pending under the Bankruptcy Act. Applicant hesitates to repeat and restate all of the statements which are contained in the companion Application of SELIGSON & MORRIS.

15. After February 2, 1970 Applicant and the Receiver continued to receive a flow of mail and telephone calls from creditors of this bankrupt all of which were

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answered by Applicant. Checks and securities continued to flow into Applicant as did a stream of account statements from other brokers despite notice from Applicant to send such correspondence to the Trustee. As indicated above, the Trustee and his counsel were also unfamiliar with the details of this case and communicated with Applicant. Applicant never failed to respond to any communications from the Trustee and his representatives.

16. Between December 1, 197⁶⁹~~Q~~ and the present time, members and associates of Applicant have rendered services to the Receiver which required an aggregate expenditure of 184 hours. Each and every professional service for which compensation is sought by Applicant was actually and necessarily rendered to the Receiver in accordance with his instructions or requests. Set forth below is a summary of the individuals who rendered such services, their hourly billing rates, the total number of hours which each such individual spent rendering services to the Receiver and the dollar amount of Applicant's usual and customary time charges for such services.

* Applicant maintains concurrent time records of all services rendered in these proceedings which are available for inspection upon request. The different billing rates for Messrs. Harvey R. Miller and Alan B. Miller reflect charges in those rates which were part of a comprehensive program affecting all clients of Applicant.

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<u>Name</u>	<u>Hourly Billing Rate</u>	<u>Hours Spent</u>	<u>Dollar Amount</u>
Harvey R. Miller	\$75 per hour	3-1/2	\$ 262.50
Harvey R. Miller	\$85 per hour	17	1,445.00
Harvey R. Miller	\$90 per hour	1/2	45.00
Alan B. Miller	55 per hour	71-1/2	3,932.50
Alan B. Miller	\$60 per hour	70-1/4	4,215.00
Alan B. Miller	\$65 per hour	13	845.00
William R. Fabrizio	\$35 per hour	8-1/2	297.50
		184 1/4	\$11,042.50

184 56.875
552
480

17. Applicant notes that it has not made any charge herein for the preparation of this Application for an allowance or any other application other than that of the Receiver.

18. Applicant again respectfully refers the attention of this Court to the Application of SELIGSON & MORRIS in which there are contained statements as to the qualifications of Messrs. Charles Seligson, Harvey R. Miller, Alan B. Miller and William R. Fabrizio which Applicant does not believe should be restated again in this Application. Suffice it to say that all of the persons who rendered the services to the Receiver on behalf of the Applicant were highly skilled, experienced, sophisticated practitioners who specialized in insolvency matters and who

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have and then had particular expertise in dealing with insolvent stock brokerage firms. By bringing to bear their experience and expertise, Applicant was able to perform the services required by the Receiver herein as expeditiously and economically as possible. The benefits which were achieved by the services rendered by Applicant and the firm of SELICSON & NORMAN are graphically demonstrated by the fact that the Receiver turned over to the Trustee in Bankruptcy over \$600,000 in cash and an inventory of stock securities and other securities having a value substantially in excess of \$300,000. Moreover, because of their expertise and efficiency, the transfer of this matter from the hands of the Receiver to the hands of the Trustee in Bankruptcy was consummated promptly and efficiently with little, if any, interruption in the orderly administration of this bankrupt estate.

19. Accordingly, Applicant respectfully requests that the Court grant to it an allowance of final compensation for the fair and reasonable value of the services which were rendered by it to the Receiver herein to the substantial benefit of the creditors of this bankrupt estate. Applicant requests that it be granted an allowance of compensation in the sum of \$11,000.00 which is slightly less than its ordinary and customary time charges which are the minimum charges which Applicant would have made to a private

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 client for such services. Applicant believes that this
 Application is consonant with the so-called "economic
 spirit" of the Bankruptcy Act and proceedings which are had
 thereunder.

20. Applicant has also disbursed the following
 amounts of money for actual and necessary expenses which
 were incurred by it in the rendition of the professional
 services rendered herein. Applicant requests reimbursement
 of the following amounts:

Duplication Charges	\$156.95
Special Stenographic Charges and related fares and meals	110.81
Toll calls & Postage	6.87
Court Reporter	41.70
Messenger Charges	7.00
Travel and Related Charges	<u>8.15</u>
Total	\$331.48

It is noted that Applicant has applied to be reimbursed for
 unusual or special stenographic charges. These charges, and
 the fares and meals of the persons performing them, are
 limited to special situations in which applicant was unable
 to perform the services rendered during normal business
 hours and in the absence of special overtime secretarial
 assistance. Said services were performed either at night
 and/or on weekends in order to properly protect and safe-
 guard the rights of this bankrupt estate. No charge is made

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or sought for secretarial services which were performed during ordinary business hours and all possible attempts were made to perform all services during usual business hours and to limit the amount of special overtime stenographic charges.

WHEREFORE, Applicant respectfully prays that it should be allowed additional compensation in the sum of \$11,000 as a final allowance of compensation for professional services rendered to JOHN T. COLLINS as Receiver herein and that it be reimbursed in the sum of \$331.28 for actual and necessary expenses incurred in the rendition of such professional services and that Applicant have such other and further relief as is just.

Dated: New York, New York
January 31, 1974

WEIL, GOTSHAL & MANGES
Attorneys for JOHN T. COLLINS,
Receiver
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(212) 758-7300

By DAVID WEIL
A Member of the Firm

SELIGSON & MORRIS APPLICATION FOR ALLOWANCEUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Bankruptcy
	:	No. 69 B 425
JAMES ANTHONY & CO., INC.,	:	
Bankrupt.	:	

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APPLICATION FOR FINAL ALLOWANCE
OF COMPENSATION FOR ATTORNEYS
FOR RECEIVER

TO THE HONORABLE ASA S. HERZOG, BANKRUPTCY JUDGE:

The application of SELIGSON & MORRIS for the final allowance of compensation as attorneys for the Receiver respectfully represents as follows:

A. PRELIMINARY STATEMENT

1. Applicant was the special counsel appointed and employed by John T. Collins in his capacity as Equity Receiver of all of the assets and properties of the above named bankrupt; and Applicant was the general counsel to Mr. Collins in his capacity as Receiver of the above-named bankrupt during the course of the superseded arrangement proceedings commenced by the above-named bankrupt.

2. On or about February 28, 1969, by order of the Honorable David N. Edelstein, United States District Judge, John T. Collins was appointed as Receiver of all of the assets and properties owned, beneficially or otherwise, by James Anthony & Co., Inc. (the "bankrupt"), and all of the

Seligson & Morris Application for Allowance

assets or other property which the bankrupt carried or maintained for the account of others, in an action then pending in the United States District Court for the Southern District of New York entitled "Securities and Exchange Commission v. James Anthony & Co. and Samuel Masiello" (Docket No. 69 Civ. 797). For the purposes of this application, the aforementioned action will hereinafter be referred to as the "Equity Receivership" and Mr. Collins, in his capacity as Receiver in the Equity Receivership will hereinafter be referred to as the "Equity Receiver".

3: Thereafter, and pursuant to authority granted by District Judge Edelstein on or about June 2, 1969, the above-named bankrupt filed with this Court its petition for an arrangement under and pursuant to Chapter XI of the Bankruptcy Act, 11 U.S.C. §701 et seq., on or about June 20, 1969. On July 3, 1969, the Equity Receiver was appointed as Receiver of James Anthony & Co, Inc., Debtor, by order of the Honorable Constance Baker Motley, United States District Judge. For the purposes of this application for allowance, the aforementioned Chapter XI proceedings will hereinafter be referred to as the "Chapter XI proceedings" and Mr. Collins, in his capacity as receiver in said Chapter XI proceedings will hereinafter be referred to as the "Receiver".

4. This application for allowance will be divided into two parts: Part I will cover the services

Seligson & Morris Application for Allowance

rendered by the law firm of Seligson & Morris (hereinafter referred to as "Applicant") during the period between March 3, 1969, the date of Applicant's retention as special counsel to the Equity Receiver, and June 20, 1969, the date of the commencement of the Chapter XI proceedings; and Part II will cover the services rendered by Applicant between July 3, 1969, the date of the appointment of the Receiver, and December 1, 1969, the date upon which Applicant's retention as general counsel for the Receiver was superseded pursuant to an order of the Honorable Herbert Loewenthal, Referee in Bankruptcy, dated December 24, 1969, authorizing the substitution and retention of the law firm of Weil, Gotshal & Manges as general counsel for the Receiver.

5. As noted above, this application is made for the final allowance of reasonable compensation for professional services actually rendered by Applicant herein between March 3, 1969, the date of the appointment and employment of Applicant as special counsel for the Equity Receiver, and July 3, 1969, the date upon which the Equity Receiver was appointed as Receiver in the Chapter XI proceeding. This application is also made for the final allowance of reasonable compensation for professional services actually rendered by Applicant herein, as general counsel for the Receiver in the superseded Chapter XI proceedings from July 3, 1969, through and including December 1, 1969, at which time the law firm of Weil, Gotshal & Manges was substituted in Applicant's place and stead as general counsel

Seligson & Morris Application for Allowance

for the Receiver in the superseded Chapter XI proceeding. Application is also made herein for the reimbursement of all actual and necessary costs and expenses incurred by Applicant on behalf of the Equity Receiver and the Receiver in connection with the rendition of such services.

6. All of the services for which compensation is sought herein were rendered in connection with the Equity Receivership and the Chapter XI proceedings and were rendered solely on behalf of John T. Collins, as Equity Receiver and as Receiver herein in the furtherance of his duties in respect of the administration of the above-named bankrupt's property in the Equity Receivership and in the Chapter XI proceedings, and in the marshaling and preservation of the assets of the above-named bankrupt in the discharge of Applicant's duties and responsibilities of said Equity Receiver and Receiver.

B. HISTORY OF THE EQUITY RECEIVERSHIP
AND THE CHAPTER XI PROCEEDINGS

7. The Equity Receivership was commenced by the filing of a complaint on behalf of the Securities and Exchange Commission ("SEC") against the bankrupt, an over-the-counter brokerage house, and Samuel Masiello, its President and sole shareholder, on or about February 27, 1969. The complaint alleged two causes of action. The first cause of action alleged that the bankrupt failed to make, keep and preserve accurate, complete and current records, books of account and other records as required by

Seligson & Morris Application for Allowance

the applicable securities laws. The second cause of action alleged that the bankrupt and its President had utilized means and instrumentalities of interstate commerce and the mails in inducing other persons to purchase and sell securities and in soliciting and accepting deposits of securities and moneys without disclosing to said persons material facts, including the fact that the bankrupt accepted moneys in payment for securities when it was financially unable to deliver securities sold to its customers and customers of other broker-dealers and that the bankrupt did not have sufficient funds with which to conduct its business in accordance with applicable securities laws.

8. On the following day, February 28, 1969, the bankrupt and its President consented to the entry of a judgment of permanent injunction pursuant to which Mr. Collins was also appointed as Equity Receiver. That judgment authorized and empowered the Equity Receiver to employ such attorneys, accountants, securities experts and other persons as he deemed necessary to discharge his authority and obligations as Equity Receiver. Pursuant to the provisions of the aforementioned judgment, the Equity Receiver employed and appointed the law firm of Paul, Weiss, Rifkind, Wharton & Garrison as his attorneys under a general retainer and, on or about March 3, 1969, the Equity Receiver employed and appointed Applicant as his attorneys under a special retainer to advise him with respect to special problems peculiar to

Seligson & Morris Application for Allowance

insolvency proceedings, particularly as said problems related to an insolvent broker-dealer.

9. In the early part of June 1969, Applicant recommended to the Receiver that it would be in the best interests of the bankrupt, its estate and creditors for a petition to be filed on behalf of the bankrupt under the provisions of the Bankruptcy Act in order to adequately protect and safeguard the rights of such persons. Set forth below in greater detail is a description of the services rendered by Applicant in connection with the commencement of the superseded Chapter XI proceedings. On June 20, 1969, the debtor filed its petition for an arrangement under Chapter XI of the Bankruptcy Act and on June 3, 1969, the Equity Receiver was appointed as Receiver in the Chapter XI proceeding.

10. On July 3, 1969, pursuant to authority granted by order dated July 15, 1969, Applicant's employment and appointment as general counsel to the Receiver in the Chapter XI proceedings was confirmed by order of this Court. Applicant continued to render services as general counsel to the Receiver between July 3, 1969 and December 1, 1969.

I. SERVICES RENDERED DURING
THE EQUITY RECEIVERSHIP

11. The services rendered by Applicant as special counsel to the Equity Receiver were actually rendered, for the most part, by Professor Charles Seligson. As indicated above, the Equity Receiver had retained the law firm of

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Paul, Weiss, Rifkind, Wharton & Garrison as his general counsel and the services rendered by Applicant to the Equity Receiver were limited to those areas in which Applicant's special expertise was required.

12. Immediately after Applicant's appointment as special counsel, Applicant was apprised that the bankrupt was named as a party defendant in several important actions and proceedings against the bankrupt then pending in state and federal courts. Certain of the aforementioned actions had either proceeded to the point of judgment or judgments were about to be obtained and entered against the bankrupt. Although the consent judgment of February 26, 1969 appointing the Equity Receiver contained broad language designed to stay and restrain the creditors of the bankrupt and others from interfering with the property of the bankrupt, it was Applicant's opinion that the consent judgment was inadequate to safeguard the interests of the Equity Receiver and the bankrupt's creditors.

13. At the request of the Equity Receiver and his general counsel, Applicant prepared an eight page application to the Chief Judge of this Court seeking a broad restraining order against the commencement or prosecution of then pending or contemplated actions by or on behalf of creditors of the above-named bankrupt in which Applicant outlined all then pending litigation of which the Equity Receiver had knowledge. In conjunction therewith, Applicant also prepared a restraining order based upon the aforesaid application and settled

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a copy of the application and order upon attorneys for all known creditors of the bankrupt in the litigation described above. The application was made to the Chief Judge of this Court, the Honorable Sidney Sugarman, in the absence of District Judge Edelstein, who was not then available to hear the Equity Receiver's request.

14. Applicant appeared on behalf of the Equity Receiver at a hearing held before Chief Judge Sugarman on March 11, 1969, and the above-mentioned restraining order was entered. Immediately following the entry of that order and at the Equity Receiver's request, Applicant arranged for the service of conformed copies thereof on all persons who were then litigating against the bankrupt or who had already obtained judgments against the bankrupt so as to restrain them from executing against the property of the bankrupt.

15. The Equity Receiver and his general counsel also apprised Applicant that a reclamation petition had been filed against the bankrupt seeking the return by Carlo Corsuti, Esq. of securities allegedly owned by Mr. Corsuti and held by the bankrupt, and further seeking to reclaim over \$3,000 in cash allegedly owned by Mr. Corsuti and deposited with the bankrupt. Applicant appeared before Chief Judge Sugarman on March 11 and 12, 1969, to resist Mr. Corsuti's petition. Following a hearing before Chief Judge Sugarman and with the consent of the Equity Receiver,

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Mr. Corsuti's reclamation petition was granted to the extent of allowing him to recover specifically identifiable securities owned by him and in the possession of the bankrupt. However, Mr. Corsuti's application to recover cash was denied, without prejudice, by Chief Judge Sugarman and referred for further findings to District Judge Edelstein upon his return. Ultimately, Mr. Corsuti's petition to reclaim the cash was denied by order of District Judge Edelstein on or about July 9, 1969.

16. From time to time between March 3, 1969, and June 20, 1969, Applicant consulted in person, by telephone and by written correspondence with the Equity Receiver, his general counsel and his accountants concerning the obligations and duties of the Equity Receiver in respect of the marshaling and preservation of assets of the above-named bankrupt; the Equity Receiver's right to demand, sue and recover assets of the above-named bankrupt; the right to sell or otherwise dispose of assets of the above-named bankrupt, including securities held by it for the account of its customers, and other related matters.

17. From the outset, the bankrupt and its President had insisted that the bankrupt was not insolvent, that it had sufficient funds and property with which to conduct its business in accordance with applicable securities laws and that its records were adequate and sufficient to enable the Equity Receiver to determine its financial condition and the rights of its respective creditors vis-a-vis

Seligson & Morris Application for Allowance

the bankrupt and each other. However, within one month after the commencement of the Equity Receivership, it became apparent to the Equity Receiver, his general and special counsel and accountants, and the employees whom he retained to assist him, that the bankrupt's books and records could be described only as "chaotic" and, in many respects nonexistent. As matters further developed during the months of April and the early part of May 1969, it became increasingly clear that the bankruptcy was hopelessly insolvent.

18. Consultation was had between the Equity Receiver, his general counsel and Applicant as to the appropriate course of action to be adopted by the Equity Receiver and the bankrupt in light of the above. Applicant advised the Equity Receiver and his general counsel that in its opinion, the Equity Receivership was not the best means of achieving a fair and equitable distribution of the assets of the bankrupt; that the bankrupt's hopes that it could resume a normal business relationship as a broker-dealer were patently unfounded; and that the best interests of the bankrupt, its estate and creditors would best be served by the commencement of a proceeding under the provisions of the Bankrupt Act.

19. In order to arrive at the conclusions set forth above, Applicant was required to examine certain transactions between the bankrupt and certain of its creditors, such as a judgment lien obtained by Shields & Company against the bankrupt on February 24, 1969, based upon which Shields &

Seligson & Morris Application for Allowance

Company obtained a restraining order which covered approximately \$100,000 deposited in the bankrupt's account at the Franklin National Bank; and a second attachment by F.S. Donohue Santo & Co. of approximately \$23,500 deposited to the bankrupt's bank account on or about March 3, 1969. Applicant was extremely concerned that at the expiration of a four month period from the date said creditors obtained or perfected their liens, they would be free to obtain the funds so liened, to the detriment of the other general creditors of the above-named bankrupt. Moreover, Applicant was concerned that the "cash customers" and "customers" of the above-named bankrupt (as defined in Section 60e of the Bankruptcy Act, 11 U.S.C. §96e) would not, in the absence of a proceeding under the Bankruptcy Act, receive the priority treatment which would have been afforded to such customers under the Bankruptcy Act. Finally, Applicant advised the Equity Receiver that he was not empowered to file a petition on behalf of the Bankrupt. Rather, Applicant advised that the bankrupt itself and by its own counsel would be required to commence a proceeding under the Bankruptcy Act.

20. Based upon Applicant's advice, the Equity Receiver applied to this Court on May 16, 1969, for an order modifying the restraining order entered by Chief Judge Sugarman on March 11, 1969, to allow and permit the bankrupt to file a petition under the provisions of the Bankruptcy

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Act. By order to show cause, District Judge Edelstein fixed May 21, 1969, as the date to consider the aforementioned petition of the Equity Receiver. Applicant appeared before this Court on May 21, 1969, and participated at the hearing. Applicant also prepared an appropriate order granting the motion of the Equity Receiver; modifying the restraining order to authorize the bankrupt to retain special bankruptcy counsel to advise it with respect to the resolution of its financial problems; authorizing the bankrupt to file an appropriate petition for relief under the Bankruptcy Act and authorizing the bankrupt to retain special counsel for that purpose; and approving the allowance of reasonable compensation for special bankruptcy counsel and the payment of necessary court fees so as to enable the bankrupt to commence the superseded arrangement proceedings. Said order was entered by the Court on June 4, 1969.

21 Thereafter, Applicant consulted with Irving Schneider, Esq., the attorney retained as special counsel to the bankrupt, in respect of Applicant's recommendations as to the appropriate proceedings and procedures to be adopted by the bankrupt.

22. On June 20, 1969, the bankrupt filed its petition for an arrangement under and pursuant to the provisions of Chapter XI of the Bankruptcy Act and Applicant's services to the Equity Receiver were essentially terminated on that date.

Seligson & Morris Application for AllowanceII. SERVICES RENDERED DURING
THE CHAPTER XI PROCEEDING

23. As noted above, on July 3, 1969, District Judge Motley appointed the Equity Receiver as the Receiver in the Chapter XI proceedings. Applicant and the law firm of Paul Weiss Rifkind Wharton & Garrison reversed their respective roles as general and special counsel to the Receiver and Applicant immediately thereafter commenced rendering services as general counsel to the Receiver in the Chapter XI proceedings.

24. Set forth below is a summary of the services Applicant rendered as general counsel to the Receiver during the course of the Chapter XI proceedings pursuant to the order retaining Applicant by Honorable Herbert Loewenthal, Referee in Bankruptcy dated July 15, 1969.

25. Immediately following the appointment and qualification of the Receiver, Applicant met with the Receiver for the purpose of establishing working procedures under which Applicant, in its new capacity as general counsel would render services as required and requested by the Receiver. Applicant was already familiar with the general circumstances surrounding the bankrupt and the events which had occurred during the Equity Receivership which eliminated the need for a detailed investigation by Applicant into the nature and scope of their retention and the services which would be required.

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26. Applicant met with the Receiver, advised the Receiver to continue the employment of two former employees of the bankrupt. Applicant prepared an order and application authorizing the Receiver to continue the retention of two former employees, which order was entered on or about August 12, 1969. At the same time, Applicant advised the Receiver of the need to retain certified public accountants, of the need to continue to occupy the premises formerly occupied by the bankrupt for a limited period of time, and in connection therewith, Applicant prepared an application and order authorizing the Receiver to make rent payments which order was entered by Referee Loewenthal on July 28, 1969.

27. Applicant and the Receiver made a joint inventory of all assets of the bankrupt located at its 76 Beaver Street office. However, because of the state of disarray of the bankrupt's offices, it was necessary to obtain an extension of time within which to file the Receiver's formal inventory of books, records and property. Accordingly, on or about August 11, 1969 an application and order extending the Receiver's time to file his inventory was prepared and filed with the court and signed by Referee Loewenthal.

28. In the interim, an order was submitted by the Receiver authorizing him to retain Applicant as his general counsel, which order was signed by Referee Loewenthal on July 15, 1969; and a second application and proposed order authorizing the Receiver to retain the accounting firm

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of B. Bernard Greidinger & Company, certified public accountants, as accountants for the Receiver was signed by Referee Loewenthal on August 11, 1969.

29. The inventory of the Beaver Street office disclosed to the Receiver and Applicant that a huge quantity of papers which were not required by the Receiver or the bankrupt was located at the bankrupt's offices and, on or about July 31, 1969, Applicant prepared an application for the Receiver to apply to this Court for authority to abandon certain papers belonging to the bankrupt and its burdensome property and to terminate and reject certain agreements of lease relating to personal property. That authority was ultimately granted by order of Referee Loewenthal dated August 14, 1969.

30. Applicant prepared the Receiver's inventory which was filed with this Court on or about August 21, 1973 and which contained a listing of all cash, certificates of deposit, furniture, fixtures and equipment of the bankrupt. However, it became readily apparent to the Receiver and Applicant that one of the bankrupt's most substantial assets, the securities held by the bankrupt for its own account and for the account of customers could not be catalogued and maintained as easily as the other items of personal property and books and records. Accordingly, at the request of the Receiver, Applicant prepared an application and order authorizing the Receiver to employ a computer service for the purpose of cataloguing and maintaining an inventory of all stock certificates then or thereafter held by the Receiver

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and said authority was granted by order dated August 19, 1973.

31. Almost simultaneously therewith, Applicant met and conferred with the Receiver for the purpose of considering the question of the sale of securities then held by the Receiver in order to minimize the potential loss to the bankrupt and/or its customers which might result from adverse market conditions. On or about August 14, 1969 Applicant prepared and the Receiver signed an application for authority to sell, assign and transfer the inventory of securities then held by the Receiver and filed that application with this Court. The original application and proposed order were filed with the Court on notice to the bankrupt and were returned to Applicant, unsigned, by Referee Loewenthal on or about September 5, 1969. Thus, the Receiver's application to sell or otherwise dispose of the inventory of securities was denied.

32. During the month of August 1969, the Receiver recognized the need to remove the offices of the bankrupt from the premises formerly occupied by the bankrupt in order to comply with District Judge Edelstein's order of May 5, 1969, which directed the bankrupt to vacate the premises on or before August 31, 1969. The Receiver found a new, smaller and vastly less expensive office in which to house the bankrupt's offices and requested that Applicant prepare an order to show cause why the Receiver should not be permitted to sell unnecessary office furniture and equipment so that he could move into the smaller and more economic

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location. Said application was granted by order of this Court dated August 25, 1969. An additional application by the Receiver to continue the authority to employ two former employees of the bankrupt whose services were deemed by the Receiver to be necessary in order to meet the Receiver's obligations to this Court, the bankrupt and its creditors was prepared by Applicant and the application was granted by Referee Loewenthal on or about September 3, 1969.

33. As noted above, the Receiver had employed Applicant as his general counsel and desired to retain his former general counsel, Paul, Weiss, Rifkind & Garrison as his new special counsel to handle all aspects of the Internal Revenue Service claims against the bankrupt. Accordingly, Applicant prepared an application authorizing the retention of special counsel which was granted by Referee Loewenthal's order of September 4, 1969.

34. The establishment of the Receiver's new offices was implemented by the purchase of certain office and air conditioning equipment pursuant to authority granted by order of this Court dated September 19, 1969 based upon the Receiver's application prepared by Applicant.

35. On or about September 1, 1969, Applicant commenced its investigation into the facts and circumstances surrounding the bankrupt's financial failure and coordinated the Receiver's investigation with that of Applicant and the Receiver's accountants. The Receiver requested that Applicant take all necessary steps to implement this investigation and on or about September 10, 1969, Applicant

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prepared and submitted to this Court, on behalf of the Receiver, an application for authority to conduct examinations of designated persons pursuant to Section 21a of the Bankruptcy Act. Said authority was granted by order of Referee Loewenthal dated September 11, 1969, and included authority to examine 15 designated persons. The examinations commenced on or about October 21, 1969 at which time Applicant examined Mrs. Olive Masiello before Referee Loewenthal. The examination of Mrs. Masiello included an investigation into her brokerage account with the bankrupt; the alleged ownership by her of a yacht which had been purchased, outfitted, repaired and maintained, in whole or in part, with funds of the bankrupt; Mrs. Masiello's personal checking account records; the joint income tax returns of Mrs. Masiello and her husband, Samuel Masiello; and certain other phases of the relationship between Mr. and Mrs. Masiello and their children and the bankrupt.

36. The examination of Samuel Masiello under Section 21a of the Bankruptcy Act commenced on November 17, 1969, before Referee Loewenthal and included inquiry into the status of Mr. Masiello's personal securities accounts at the bankrupt; an examination into the alleged ownership of an affiliated corporation, Tycoon Investment Corporation which appeared to be the owner of a twin engine airplane purchased with funds of the bankrupt; as well as the extensive brokerage account maintained in the name of his teenage son with Bruns Nordeman & Co. in which account over a half million dollars in securities transactions occurred

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within a thirty-day period with securities and funds of the bankrupt.

37. Section 21a examinations of Anthony Masiello and James Masiello, sons of Mr. and Mrs. Samuel Masiello were commenced before Referee Loewenthal on October 9, 1969. These investigations developed into areas such as the ownership of automobiles which may have been purchased with the bankrupt's funds, the true ownership of stock brokerage accounts maintained in the names of the Masiello sons but with funds belonging to the bankrupt, and substantial disbursements of hundreds of thousands of dollars in funds of the bankrupt for what appeared to be massive personal expenditures for the benefit of all four members of the Masiello family and certain other persons.

38. The examinations of the four members of the Masiello family lead to additional inquiries by Applicant on behalf of the Receiver into the facts and circumstances surrounding the relationship between Anthony Masiello and the brokerage account maintained in his name with Bruns, Nordman & Co. As indicated above, the Anthony Masiello account involved the purchase and sale of more than \$700,000 of securities within a two to four week period; and against those purchases it developed that almost 32,000 shares of miscellaneous securities comprising 119 different stock issues were delivered to Bruns, Nordman & Co. and sold through Anthony Masiello's brokerage account at that firm. In accordance with the Receiver's instructions, Applicant undertook

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an investigation into the applicable law regarding a potential cause of action by the Receiver against Bruns Nordman and on November 13, 1969, Referee Loewenthal authorized additional examinations of Bruns Nordman, a former employee of Bruns Nordman and of Peninsula National Bank for the purpose of delving further into the relationships between the bankrupt and members of the Masiello family on the one hand, and Bruns Nordman on the other.

39. Similarly, Applicant continued the Receiver's investigation into the facts surrounding Tycoon Investment Corporation which, according to Samuel Masiello, was owned by his son James Masiello. It appeared, according to the investigation by Applicant, that Tycoon was the owner of a twin-engine airplane which was purchased with the proceeds of a check of the bankrupt made payable to Tycoon's order in the approximate amount of \$35,000. It also appeared, according to Applicant's investigation, that other legal and organization expenses of Tycoon were paid by the bankrupt.

40. Applicant's investigation into the acts, conduct, assets and liabilities of the bankrupt and related persons also revealed that more than 335 checks of the bankrupt's had been drawn on the bankrupt's bank account at Chemical Bank and made payable to either members of the Masiello family, to cash, or to third parties in payment of numerous and substantial personal obligations and expenses of the Masiello family. The checks, aggregating more than

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\$500,000, included payment to department stores, specialty shops, laundries, cleaners, restaurants, hotels, marina, yacht repair agencies, supply stores, landscape architects, jewellers, insurance agents and persons employed to perform services on the yacht "Jasco". At the Receiver's request, Applicant's investigation into these matters was undertaken but was not complete at the time that Applicant's services (and those of its successor, Weil, Gotshal & Manges) were terminated as a result the adjudication of James Anthony & Co. Inc. as a bankrupt and the election of the Trustee.

41. At the date of adjudication, the services rendered by Applicant (and Applicant's successor, Weil, Gotshal & Manges) were on-going into the investigation which is outlined above. Of necessity, that investigation and the results of Applicant's efforts were promptly turned over to the attorneys representing the trustee immediately following adjudication. While the services rendered by Applicant, in connection with the investigatory phase of the Chapter XI proceedings are summarized above, Applicant respectfully requests that the Court incorporate herein by reference the report of Weil, Gotshal & Manges to Martin J. Bush, Esq., the Trustee, dated March 17, 1970, further summarizing the services rendered by Applicant during the course of the Receiver's investigation. Said report is in the form of a letter to Mr. Bush dated March 17, 1970, and a copy is attached hereto and marked Exhibit A.

42. The investigative phase of the duties of Applicant, as counsel to the Receiver, was an extraordinarily

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difficult and inordinately time consuming undertaking. As noted above and in Exhibit "A" hereto, the bankrupt's books and records were in a hopelessly disorganized state and were deficient in many respects to the extent that they even existed. More often than not, the books and records which a broker-dealer was required to maintain did not exist or had been mislaid or destroyed prior to the commencement of the Equity Receivership. As a result of the foregoing, the investigative aspect of the Chapter XI proceeding required Applicant and the Receiver's accountants to reconstruct many records and transactions to the extent possible; and to devote an extraordinary amount of time to these matters in the form of personal conferences, written correspondence and literally hundreds of telephone calls.

43. In addition to the services rendered by Applicant in conjunction with the Receiver's investigation there was a second key phase of the administration during the Chapter XI proceedings which involved the liquidation of accounts receivable and choses-in-action existing on behalf of the bankrupt against various persons.

44. Applicant assisted the Receiver in attempting to collect all outstanding accounts receivable due the bankrupt from and after the commencement of the Chapter XI proceedings. The success which the Receiver and Applicant had for the period of June 20, 1969 through February 20, 1970 is illustrated by the fact that the Receiver collected more than \$50,000 in accounts receivable due from other broker-dealers. In addition, the Receiver was able to obtain

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from Franklin National Bank the sum of approximately \$130,000 which had been frozen in a bank account under a levy of attachment. Further, the Receiver collected almost \$1,000 in dividends and the additional sum of approximately \$13,000 of miscellaneous accounts receivable was also collected during the Chapter XI proceedings.

45. These collections were largely effected as a result of efforts by Applicant on behalf of the Receiver. For example, approximately \$4,500 plus shares of stocks were collected from Interstate Securities as a result of correspondence between Applicant and Interstate which occurred during August and September 1969. During the month of September, Applicant communicated with counsel for Shields & Company which had attached a bank account of the bankrupt at Franklin National Bank in an attempt to prevail upon Shields & Company to release its attachment. Repeated correspondence between Applicant and counsel for Shields & Company was of no avail and at Receiver's request, Applicant commenced preparation of an application and an order to show cause requiring a surrender of the sum of \$130,000 held in the bankrupt's bank account at Franklin National Bank. The need for this litigation arose on account of the delay on the part of creditors who had attachments against said bank account refusing voluntarily to release them. On or about October 31, 1969, a turnover order was entered by Referee Loewenthal in these proceedings which resulted in the release of \$130,000 which was placed in an interest bearing account pursuant to authority granted by the Court.

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46. Similar services were rendered by Applicant in connection with collection of credit balances of the bankrupt with other stockbrokers. In one instance, the brokerage firm of Cohen, Simonson & Rea refused payment of a credit balance of approximately \$3,000 in the absence of a court order requiring the turnover of such funds. The necessary court order was obtained after an application therefor was made by the Receiver and that application was granted by order of Referee Loewenthal dated on or about October 20, 1969. Likewise, other accounts receivable and credit balances were collected only after persistent dunning by Applicant on behalf of the Receiver. Likewise, the firm of Mayflower Securities Co., Inc., refused to surrender the sum of \$12,126.45. Applicants prepared an order to show cause directed to Mayflower which was signed by Referee Loewenthal on November 10, 1969. As a result of this proceeding the entire account was collected by the Receiver on or about December 5, 1969.

47. It would be impossible for Applicant to detail all of the services which were rendered by Applicant on behalf of the Receiver. Literally thousands of letters were written and received by Applicant and thousands of telephone calls were made and received by Applicant. In addition, Applicant attended numerous hearings before this Court in the representation of the Receiver; Applicant defended claims against this bankrupt estate during the Chapter XI proceedings, and

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indeed, tried and defended at least three reclamation claims against this bankrupt estate which required complete trials and submission of memoranda of law following trial. Applicant believes that the effectiveness of the services which it rendered to the Receiver demonstrated by the fact that following adjudication herein a very modest sum was collected by the Trustee in Bankruptcy on account of "quick" assets which were known or became known to the Receiver during the course of his administration because of the effective campaign mounted by Applicant on behalf of the Receiver to reduce all possible assets to cash. It is interesting to note that in addition to the securities which were turned over to the Trustee in Bankruptcy herein, almost \$600,000 in cash was turned over to the Trustee in Bankruptcy as a result of the efforts of the Receiver and the Equity Receiver. The securities which were turned over to the Trustee in Bankruptcy, together with a computerized inventory thereof, had a value of approximately \$370,000 as at the date of adjudication herein.

48. Applicant also worked closely with special tax counsel to the Receiver, the law firm of Paul, Weiss, Ruskoff, Wharton & Garrison in connection with the claim of the United States Government asserted against the bankrupt for over \$1,000,000 on account of an alleged liability for interest equalization taxes. In conjunction with the investigation and representation by special counsel, applicant met and conferred with special counsel and researched various questions posed by special counsel relating to matters governed by Sections 57 and 64 of the Bankruptcy Act, among others.

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49. It would be impossible for applicant to review and recite in detail, each and every professional service rendered to the Receiver in this proceeding. The summary of services rendered by Applicant and set forth above is intended to highlight the intensive nature of this retention and is not intended to be all inclusive.

III. THE COMPENSATION SOUGHT

50. Applicant believes that it is undisputable that the services it rendered to the Equity Receiver and Receiver herein were extensive and substantial professional services which were demanding in terms of time and effort and particularly because of the nature and difficulties inherent in an insolvency proceeding in respect of a broker-dealer. In a case such as the one involved here, involving assets of almost \$1,000,000 (without regard to causes of action), which is brought under control, organized under an Equity Receiver and a Chapter XI receiver in a relatively short time, when an intensive investigation is undertaken by counsel for the Receiver, no one would doubt that the value of those services is incalculable when the results which are achieved are comparable to those in the case at bar.

51. The very nature of this type of a proceeding and the assets and liabilities of the bankrupt imposed upon Applicant, the Receiver and his accountants a degree of responsibility in excess of that ordinarily present in the representation of a temporary receiver. By their nature,

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receiverships are traditionally short and rather uncomplicated proceedings which are instituted to maintain the status quo ante pending a more definitive resolution of the problems of the particular insolvent entity. However, in this case, the Equity Receivership and the Chapter XI proceedings lasted almost one year.

52. On December 1, 1969 the law firm of Seligson & Morris ceased the active practice of law as a partnership. On that date, Professor Charles Seligson, a senior member of Applicant; Harvey R. Miller, a member of Applicant; Alan B. Miller, a senior associate of Applicant; and William R. Fabrizio an associate of Applicant all became associated with the law firm of Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York. Professor Seligson became Counsel to the law firm of Weil, Gotshal & Manges on that date. Harvey R. Miller became a member of said firm on December 1, 1969 and Alan B. Miller and William R. Fabrizio became associates of the law firm of Weil, Gotshal & Manges on December 1, 1969. Said individuals had comprised the team of attorneys who had rendered services to the Receiver in connection with the Equity Receivership and the Chapter XI proceedings. Those services which had been rendered to the Receiver by Applicant prior to December 1, 1969 were continued by the same team of attorneys after they became associated with Weil, Gotshal & Manges. Thus, there was no interruption in the services which had been and were being rendered by Applicant. The substitution of Weil,

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Gotshal & Manges as attorneys for the Receiver in place and stead of Applicant was confirmed by order of this Court dated December 24, 1969.

53. Applicant notes that, following the adjudication of James Anthony & Co. Inc. as a bankrupt, which occurred on or about February 2, 1970, a period of close to two months was required in order to enable Applicant and its successor firm, Weil, Gotshal & Manges, to prepare and submit to the Trustee a comprehensive report on those events and developments which had occurred during the Chapter XI proceedings and the Equity Receivership and to outline the open areas which remained to be followed up by the Trustee in Bankruptcy. A comprehensive and definitive report, in the form of Exhibit "A" hereto, was submitted to the Trustee in Bankruptcy together with pertinent documents on or about March 17, 1970.

54. Applicant and Weil, Gotshal & Manges believe that it is fair to state that the services which they rendered were necessary, proper and beneficial to this bankruptcy estate. As evidence of the benefit which was conferred by the services rendered by Applicant, it is noted that the gross assets which were turned over to the Trustee in Bankruptcy approximated substantially more than \$900,000, which included approximately \$600,000 in cash plus an inventory of securities having a value substantially in excess of \$300,000.

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55. This application is made for the allowance of final and reasonable compensation for professional services actually rendered by Applicant in the Chapter XI proceedings and in the Equity Receivership from the date of the initial retention of Applicant in March 1969, through and including December 1, 1969, at which time the law firm of Weil, Gotshal & Manges was substituted for Applicant as counsel for the Receiver. A separate application for the allowance of final compensation to the law firm of Weil, Gotshal & Manges will be submitted by said firm which will incorporate, by reference, this application for an allowance in its entirety.

56. The rendition of professional services herein by Applicant required the expenditure of substantial time and effort on the part of several attorneys. During the course of the Equity Receivership and the Chapter XI proceedings, Applicant devoted an aggregate of 571 3/4 hours by members and associates of Applicant and of that amount, approximately 550 hours were expended between July 3, 1969 and December 1, 1969, a period of five months. One of the traditional measurements of compensation considered in bankruptcy proceedings is the time expended by counsel. Set forth below is a detailed analysis of the time actually expended by Applicant, indicating the name of the attorney who expended the time, his billing rate per hour, the number of hours expended and the total charges:

Seligson & Morris Application for AllowanceLOQUITY RECEIVERSHIP

<u>Name of Attorney</u>	<u>Billing Rate Per Hour</u>	<u>Hours Expended</u>	<u>Total Charges</u>
Charles Seligson	\$125.	15 1/2	\$ 1,937.50
Harvey R. Miller	75.	10 1/2	787.50
		26	\$ 2,725.00

CHAPTER XI PROCEEDINGS

<u>Name of Attorney</u>	<u>Billing Rate Per Hour</u>	<u>Hours Expended</u>	<u>Total Charges</u>
Charles Seligson	\$125.	15	\$ 1,875.00
Harvey R. Miller	85.	66	5,610.00
Alan B. Miller	55.	347 1/4	19,098.75
William R. Fabrizio	35.	117 1/2	4,112.50
Total		545 3/4	\$30,696.25
Grand Total*		571 3/4	\$33,421.25

The professional services required of Applicant in these proceedings demanded a high degree of professional competence and expertise. The attention of the Court is drawn to the fact that, prior to 1969, only one stock-brokerage firm had ever been the subject of an insolvency proceeding in this Court. In re Ira Haupt & Co. (64 B 259); and Applicant was counsel for the Trustee in that case. Through the knowledge and expertise gained by Applicant in the Haupt case, Applicant was able to bring to bear and take advantage of its expertise in connection with liquidation of a broker-dealer under the provisions of the Bankruptcy Act. As the

* Applicant maintained concurrent time records of all services rendered to the Receiver which are available for inspection upon request.

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Court may also note, Applicant's adversaries in this case were highly respected members of the Bar.

57. The rendition of professional services herein was under the general supervision and guidance of Charles Seligson. Professor Seligson is a recognized authority and expert in the area of creditors' and debtors' rights. His experience has extended over forty-five years of continuous and active practice of law. Professor Seligson is also Chairman of the National Bankruptcy Conference, a member of the Advisory Committee on Bankruptcy Rules in the United States Judicial Conference, and a Professor of Law at New York University Law School. He was appointed by the President of the United States as a member of the commission to study the Bankruptcy Act and to recommend to Congress revisions, amendments and/or changes in bankruptcy law. Professor Seligson is also co-author of four volumes of Collier, Bankruptcy - 14th Edition, and he has written and lectured extensively in the area of his expertise. His experience and scholarship added to the successful representation of the Equity Receiver and the Receiver in these proceedings.

58. A substantial portion of the services rendered by applicant in these proceedings were rendered by or under the supervision of Harvey R. Miller. Harvey R. Miller was a member of Applicant and has had long and extensive experience in proceedings under Chapter XI and other provisions of the Bankruptcy Act. He is co-author of the

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Collier, Forms Manual, a member of the National Bankruptcy Conference, and will become an Adjunct Associate Professor of Law at New York University Law School in the fall of 1974.

59. The bulk of the services rendered on a day-to-day basis in connection with these proceedings were rendered by Alan B. Miller. Mr. Miller was a senior associate of Applicant and has had long and extensive experience in proceedings under the Bankruptcy Act. Since the time that Applicant rendered services to the Equity Receiver and Receiver in these proceedings, Mr. Miller has become associated with and a member of the law firm of Weil, Cotshal & Manges. Additional services which were rendered herein were performed by William R. Fabrizio. Mr. Fabrizio had recently become a member of the Bar when he joined Applicant. Since that time, Mr. Fabrizio specialized in insolvency proceedings, became an associate of the law firm of Weil, Cotshal & Manges and is now associated with the firm of Hahn, Messen, Margolis & Ryan.

60. Based upon Applicant's usual and customary charges for services rendered herein, Applicant's charges would normally exceed \$40,000 had those services been rendered to a client who was not a court-appointed fiduciary in proceedings under the Bankruptcy Act. Nevertheless, since Applicant is cognizant of the so-called "spirit of economy" which is said to permeate proceedings under the Bankruptcy

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Act, Applicant submits that it is entitled to be compensated for the fair and reasonable value of the services which have been rendered by it particularly where those services have resulted in enormous benefits to the creditors of this bankrupt estate. Applicant has not received any compensation whatsoever despite the fact that more than four years have elapsed since those services were rendered. Accordingly, applicant requests that it be granted a final allowance of compensation in these proceedings for the services actually rendered to the Equity Receiver and the Receiver in the amount of \$33,000.

61. Applicant has disbursed the following amounts for the actual and necessary expenses incurred in the rendition of professional services rendered herein and requests reimbursement of such disbursements:

Duplication charges:	\$189.15
Postage (special):	57.42
Messenger service:	86.00
Long distance telephone charges:	14.36
Fees for lien and other searches:	25.00
Special stenographic overtime	318.69
charges and transportation	
and meals relating to same:	
Transportation and meals:	<u>50.66</u>
Total:	\$749.28

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It is noted that Applicant has applied to be reimbursed for unusual or special stenographic charges. These charges, and the fares and meals of the persons performing them, are limited to special situations in which applicant was unable to perform the services rendered during normal business hours and in the absence of special overtime secretarial assistance. Said services were performed either at night and/or on weekends in order to properly protect and safeguard the rights of this bankrupt estate. No charge is made or sought for secretarial services which were performed during ordinary business hours and all possible attempts were made to perform all services during usual business hours and to limit the amount of special overtime stenographic charges.

62. No previous application for the relief sought herein has ever been made to this or any other Court.

WHEREFORE, Applicant prays that it be allowed final compensation for professional services rendered herein to the Equity Receiver and the Receiver in the sum of \$33,000; and that it be reimbursed in the sum of \$749.28 for actual and necessary expenses incurred in connection with the rendition of the professional services; and that Applicant have such other and further relief as is just.

Dated: New York, New York
January 30, 1974

SELIGSON & MORRIS
Attorneys for John T. Collins
as Equity Receiver and Receiver
c/o Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York

By BY CAROL LEE SELIGSON
A Member of the Firm

JUNE 4, 1974 HEARING ON APPLICATIONS FOR ALLOWANCES

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Anthony

rendered at that time 117 and a half hour services at \$35 an hour for \$4,112.50 or a total of 545 and three-quarter hours for \$30,696.25.

I can tell you that Harvey Miller and I spent many days before Judge Lowerthal at that time in 21a examinations of the members of the Massiello family in an attempt to delve into the Bruns Nordeman things that Mr. Rosen told Your Honor about before, the personal family transactions involving hundreds of thousands of dollars, payment of bills, personal bills by the bankrupt and a variety of other matters, including reclamation petitions that were successfully defended; claims for tracing of securities and a host of other matters.

This was in my view an extraordinary situation because your average receivership lasts a period of thirty to sixty days. This one lasted one

Anthony

1
2
3 year and the problems that are
4 encountered in the average receivership
5 are really we will hold it forth until
6 the trustee is appointed or elected
7 and then we will turn it over.

8 To the extent you can in the
9 usually brief period of time gather
10 together some assets, all well and
11 good, but here we had a whole year.

12 We started what I think was
13 a very good start on an investigation
14 which has been assumed since then by
15 Mr. Morritt and by Mr. Rosen.

16 I think if Your Honor will look
17 at Mr. Collins' application, there is
18 appended to it the receiver's financial
19 report by the accounting firm of
20 B. Bernard Greidinger & Co. They
21 became the receivers' certified public
22 accountants pursuant to an order entered
23 by Judge Lowenthal about July 15, 1969,
24 and they really performed an incredible
25 task.

June 4, 1974 Hearing on Applications for Allowances

47

Anthony

These records, these books that were available when Mr. Liman's firm and ours went down first to see this office, it looked like a wind tunnel. It looked like somebody had just come in and thrown everything in the middle of the room.

There were tickets, sales and purchase tickets just scattered in boxes. We found checks, securities in desk drawers. This was the typical way in which these offices had been maintained.

So it was incumbent upon the receiver to retain accounts to try and reconstruct and I am painfully reconstruct what had occurred and they did in my view an outstanding job.

The Peat Marwick firm who had preceded them had done a -- of customers and brokers-dealers to get their views as to what the liabilities of the bankrupt were but the Greidinger firm started from the

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2 Anthony

3 bankrupt's end to see what the bank-
4 rupt's books and records were.

5 I just can't say enough for
6 the assistance that they rendered to
7 the receiver and all of his counsel
8 during the Chapter XI proceedings.

9 Now, while they were trying
10 to reconstruct that, we were out
11 trying to collect assets and resist
12 the claims, if you will, of persons
13 who were -- who claimed they were
14 entitled to cash and securities.

15 THE JUDGE: Do you have any
16 judgment as to what your activities
17 and that of your client Collins contri-
18 buted at the time three-quarters of
19 a million dollars in assets?

20 MR. MILLER: Yes, in Mr.
21 Collins' application, in paragraph 49,
22 if I may refer Your Honor's attention,
23 total cash receipts of the receiver
24 in the Chapter XI proceedings were
25 \$632,430.09, which included certificates

Anthony

of deposit which he had collected
in the preceding equity receivership
of \$425,000.

THE JUDGE: That is paragraph
what?

MR. MILLER: 49. It recites
that on February 13th Mr. Collins
turned over to Mr. Busch, the trustee,
certificates of deposit in the face
amount of \$568,272.57, which had
accrued interest on that date of
\$3,900 plus cash of approximately
\$25,000 and securities which were
valued as of January 30, 1970 at
\$370,000.

So that I think that it's
fair to say that the equity receiver
and his counsel, general and special
together, furnished the bulk of the
estate.

I don't know what the value
of the securities is that's on hand
or what's happened since then.

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2 Anthony

3 Of course, Mr. Morritt would
4 be familiar with that, but I do know
5 that there was a very nice package
6 turned over to the trustee when he
7 qualified.

8 THE JUDGE: Is there anything
9 you want to add further?

10 MR. MILLER: Well, I would stand
11 on our papers. I think that the job
12 that we did in the period of time
13 speaks for itself. I don't think that
14 there were a half dozen accounts
15 receivable that were outstanding and
16 not collected by either Mr. Miller's
17 firm or by our firm.

18 Indeed, many of the accounts
19 receivable which were collected during
20 the receiverships were from firms
21 which ultimately wound up in this
22 court, including First Devonshire
23 and others.

24 THE JUDGE: How are the hourly
25 rates that you were asking for in your

Anthony

it showed that it was charged at fair and reasonable rates which were less than our regular rates to regular clients but which nevertheless we feel were very substantial services rendered.

We turned over close to -- an estate of close to a million dollars between my firm and Mr. Liman's firm.

We were able to -- upon Shields & Co. of over \$100,000. We collected I think it was over \$55,000 to \$60,000 in accounts receivable. We had stock, stock dividends we collected.

Cohn, Simpson and Ray, we collected a substantial receivable of several thousand. Many of these firms are no longer in business. We pressed hard to collect those assets, all of us and I think we did a good job.

THE JUDGE: Does anyone have any questions?

MR. SARNO: Yes.

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Anthony

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I think Mr. Morritt and Mr.

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Rosen will tell you the kind of shape

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they found that office in when they

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came in after the adjudication. It --

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a good deal easier for them having

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that kind of attention devoted -- Mr.

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Fabrizio was right out of law school

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when he came on this case but he really

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rendered valuable service to us.

12

It was a question of needing

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people to work on this case and we

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needed people -- not less skill but

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less experience perhaps.

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THE JUDGE: He started out at

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the rate of \$35 an hour which is not

18

exorbitant for even a first or second

19

year man.

20

THE WITNESS: Right.

21

Q Can you explain what you did

22

during the receivership?

23

A I probably answered over a thousand

24

letters, took over a thousand telephone calls,

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reviewed -- if I didn't prepare any -- every

Anthony

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3 piece of paper in this court, I certainly
4 reviewed it.

5 I appeared before Judge Lowenthal
6 in 21a examinations of every one of the Massiellos
7 family for several days; the transcript of
8 which were turned over to Mr. Rosen and Mr.
9 Morritt.

10 I appeared in opposition, as I say,
11 to the reclamation proceedings. I drafted
12 an interim report by the receiver which was
13 sent to every creditor.

14 In effect, I was the man during the
15 Chapter XI proceeding who handled this case on
16 a day to day basis under the supervision of
17 Prof. Charles Seligson and Harvey Miller, who
18 were the senior and junior members of the firm
19 of Seligson and Morris.

20 Any inquiry, any legal document,
21 any letter that had to be answered or written
22 probably went out over my signature.

23 THE JUDGE: For the court
24 would you just briefly describe the
25 kind of timekeeping records you

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2 Anthony

3 Mr. Morritt.

4 N E I L

M O R R I T T,

5 Called as a witness, having
6 been first duly sworn by the
7 Judge, was examined and testified
8 as follows:

9 EXAMINATION BY THE JUDGE:

10 Q What is your name?

11 A Neil J. Morritt.

12 Q What is your address?

13 A 200 Park Avenue, New York, New York.

14 In view of counsel that has gone
15 before me and has described the background to
16 the court, I don't think there is any necessity
17 to go into that.

18 So I will pick it up simply from the
19 point at which I started representing the trustee,
20 Mr. Busch.

21 I will say one thing and I will have
22 to agree with counsel that went before, that the
23 handling of the 60E stock brokerage house
24 bankruptcy has been far and away the most com-
25 plicated, involved and complex matter that I have

Anthony

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3 ever been involved in and I would say that
4 most counsel that have been involved in this
5 situation would say the same.

6 We started off, of course, preparing
7 applications and orders authorizing retention
8 of general counsel and special counsel.

9 We prepared -- I prepared an applica-
10 tion and order to show cause for records to be
11 turned over. There was an application for an
12 order for retention of accountants; all in the
13 administration -- the taking over of the estate
14 here and I think you can get somewhat of a back-
15 ground from what existed in that regard from
16 what Mr. Miller has stated.

17 The taking over of this from the counsel
18 for the receiver was a monumental job. There
19 was a premises at 30 Church Street that Mr.
20 Miller referred to but no release had been signed.

21 We took over in the process of negoti-
22 ation of a lease. We had to redraft substantial
23 portions of that lease. I negotiated with the
24 attorney for the Port Authority, worked out a
25 favorable arrangement; made an application to the

Anthony

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3 court which was approved and we had the use of
4 premises at 30 Church Street for the time that
5 was necessary.

6 I prepared applications and orders
7 for transfer certificates of deposit, subse-
8 quent orders authorizing renewal of certificates
9 of deposit at the prevailing highest interest
10 rates.

11 I prepared applications and orders for
12 appraisal and sale of assets. I prepared the
13 trustee's interim reports in connection with the
14 trustee.

15 I would say one of the most time
16 consuming aspects of handling this type of
17 bankruptcy and it certainly consumed a lot of
18 my time was simply handling inquiries by
19 creditors. By the very nature of the 60E
20 stock brokerage house bankruptcy, you get a
21 lot of creditors that are not represented by
22 counsel and I don't mean this in any demeaning
23 sense, they're represented by counsel who really
24 don't understand the nature of the bankruptcy
25 and who had no idea of the rights of their

Anthony

clients under Section 60E.

It's not an adversary proceeding in that sense, it's the duty and obligation of the attorney for the trustee and the trustee to advise creditors and answer their questions as to what their rights may be and what their position has to be.

There wasn't a day that went by that wasn't filled with letters, telephone calls from various creditors. The trustee handled some of them, I handled a great deal of them.

We had to frankly because if we don't, then the telephone calls started coming into the court and they have to be taken care of. These people have to be advised and their questions have to be answered.

Just taking over the documentation in this matter was a tremendous time consuming job. I spent time at the offices of Paul Weiss. I spent time with Mr. Miller. The folders between Paul Weiss and Mr. Miller, excluding transcripts of 21a examinations would cover half of one of these large tables.

Anthony

I think just the letter that Mr. Miller prepared, just listing the documents ran something like nineteen or twenty pages. Everyone of those had to be receipted, everyone of them had to be read, reviewed, catalogued.

In other words, before you could even start going on this thing, you had to know what you had behind you, what the basic documentation was.

Then, for example, talking about the securities, the take-over of the securities. We were advised that that would be a four day job, a three to four day job just taking over the securities.

We are talking about thousands and thousands of securities. The problem was they were in a safe deposit vault and if we couldn't furnish it in one day, we'd have a serious problem of moving those securities.

We assembled a team, we went in there, I think we had something like six or seven people. We worked from early in the morning to late at night.

Anthony

Mr. Miller, I believe, was there. We went through every single security, checked it off and completed the entire task in one day. That's the kind of thing that's involved in this. It's the kind of thing that absolutely requires the attention of counsel.

There is no way that you can have clerical help, you know, without supervision dealing in this type of situation.

You are talking about hundreds of thousands of dollars of securities and many legal questions did arise as to how a given security had to be described, whether it corresponded to what was listed and so forth.

I would say that it would take a long time to go through every aspect of this.

THE JUDGE: I think you pretty well documented the highlights of your services.

I have glanced through that and obviously I will give it more careful scrutiny when I come to make a recommendation.

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Do I understand that you were in private practice for yourself?

MR. MORRITTL I am a partner in the law firm of Hicco and Busch as indicated on the papers.'

Mr. Busch, who is the trustee, is my law partner but I handled this matter individually. It was not the firm that handled it but I handled it rather myself.

THE JUDGE: I am looking at paragraph 101, so that all the hours that are set forth there are your hours, no one else in the firm?

MR. MORRITT: That's essentially correct.

I did have assistance from time to time. Obviously, I used the offices of the firm, I used secretarial help in the firm and so forth.

THE JUDGE: But I am talking about professional help that worked on this were principally yourself?

Anthony

MR. MORRITT: The number of hours billed are my hours. If I used legal staff, I did not bill their hours because it wasn't that significant a factor.

THE JUDGE: Your hourly rates have moved up from 1970 at \$75 to \$85 in 1972 and \$100 in 1974?

THE WITNESS: That's right.

THE JUDGE: Reflecting today's increased costs, inflation.

THE WITNESS: I would venture to say we probably made more money at \$75 an hour in 1970 than I do at \$100 an hour in 1974.

THE JUDGE: How do they compare the rates you charge your regular clients?

THE WITNESS: These rates that I am billing for reflect rates that I charge my regular clients that were charged on a time basis at those time periods indicated.

1 Anthony

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3 THE JUDGE: What fee application
4 is Mr. Busch seeking?

5 THE WITNESS: Mr. Busch has not
6 put in an application at the present
7 time for his fee as trustee. He will
8 be preparing that and will be submitting
9 it to the court.

10 THE JUDGE: In short what you
11 are saying from your papers is that
12 you feel that you have earned \$132,250
13 and recognizing the economy fostered
14 by the Bankruptcy Court you are willing
15 to accept \$125,000?

16 MR. MORRITT: Your Honor, I
17 earned every cent of it. It was with
18 sweat.

19 THE JUDGE: I am not going to
20 make any comment unless I really go
21 through it.

22 Is there anything more you
23 want to add?

24 MR. MORRITT: I think that's it.
25 I think the papers pretty well speak

Anthony

for themselves.

THE JUDGE: Do counsel or any other interested parties care to inquire?

EXAMINATION BY MR. SARNO:

Q In these hearings in the Bankruptcy Court, were you frequently present with Mr. Rosen?

A Less than half of the time. I came only when I felt -- we tried very much to avoid any possible duplication of effort here.

The only time that I was present for hearings and it was probably less than fifty percent of the time, were those areas which involved litigation that I had the predominant responsibility for. We had a breakdown of responsibility between Mr. Rosen's office and myself, although we communicated almost daily on these matters.

But for example, where the Massiellos were being examined in 21a, although I may not have asked them direct questions, certainly there was information that I wanted to obtain from them and I would sit at counsel table with Mr. Rosen and we would work together with it.

Anthony

There were some situations in which Mr. Rosen was not here and I took the examinations myself, but essentially he was there, I would say, less than fifty percent of the time because it wasn't necessary for me to be there all the time.

Q Can you approximate approximately how much of your hours were spent in the Bankruptcy Court hearings?

A I really couldn't estimate. I make no distinction-- Mr. Rosen makes a distinction for time charges in court and out of court.

It's not my practice to make that distinction. A reading of my papers would indicate though because I have -- because I have time records, would indicate how many hours I spend in court.

Since I make no distinction for billing, I really couldn't say.

THE JUDGE: The same question I asked Mr. Rosen and Mr. Miller about bank-up documents, do you keep a diary?

THE WITNESS: Yes, I keep a diary in connection with any matter

Anthony

I am handling on a time basis. I make a notation of phone calls and so forth and whatever work that we do, that's then logged cumulatively by week or by month.

It varied from various times. We changed the procedure at various times from 1970 through 1974 but the records, the time records are a reflection of actual records kept by myself.

THE JUDGE: The daily work sheets are made at or about the time that the work is being performed?

THE WITNESS: Yes, at the time that it's being performed.

Q On the Bruns Nordeman litigation, you made court appearances there?

A Yes, I did. In fact, I argued.

The primary thing on Bruns Nordeman of course was the motion to dismiss. Frankly, I am pleased to say that we made law on that and I think it's good law and I think it will hold up, but I argued -- I had the predominant

Anthony

responsibility for preparing the pleadings, the briefs and I argued the Bruns Nordeman case before the court.

Q On those court appearances you were in court together with Mr. Rosen?

A No, Mr. Rosen was not present at the time that I argued the motion. The trustee was present with me, of course. I have been present -- if your question is have I been present with Mr. Rosen in court on the Bruns Nordeman matter, I have attended several hearings before Magistrate Raby with Mr. Rosen.

The nature of the Bruns Nordeman case -- in fact, the nature of most of the things that involve mes Anthony is such that it's an impossible task for one attorney.

There are various aspects. If you saw the pleading and the memo and so forth, I think you would appreciate the fact that you divided up various aspects of the case, various responsibilities.

Therefore, on occasions when it has been necessary for both of us to be there, I

1
2 Anthony

3 have been there with Mr. Rosen.

4 MR. SARNO: I have no further
5 questions.

6 THE JUDGE: Mr. Liman.

7 A R T H U R L I M A N,

8 Called as a witness, having
9 been first duly sworn by the
10 Judge, was examined and
11 testified as follows:

12 MR. LIMAN: I am a member of the
13 firm of Paul, Weiss, Rifkind, Wharton &
14 Garrison. We were the attorneys for
15 the equity receiver appointed in 1969.

16 I should say that not only
17 have five years past but I was not
18 aware until late last night that the
19 hearing was on for today.

20 I was the partner in charge of
21 this matter and Mr. Miller has sketched
22 out some of the problems and -- I will
23 try not be cumulative.

24 The equity receivership was
25 established at the insistence of the

Anthony

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3 S.E.C. and I attended the first meeting
4 at the S.E.C. with the Massiello and
5 their counsel, at which time we were
6 told that the estate, if it fails
7 were cleared up, should have a net
8 worth of approximately two and a half
9 million dollars.

10 I personally visited the
11 brokerage office and I should say by
12 way of my qualifications and by way
13 of giving Your Honor some idea of the
14 dimensions of the problem that has
15 been illustrated by others here today,
16 that I formed the securities fraud
17 unit in the United States Attorney's
18 Office under Robert Morgenthau.

19 I think in that capacity I
20 had seen the inside of a number of
21 what are called boiler rooms. Not
22 to suggest that Mr. Massiello was
23 operating a boiler room but just by
24 way of comparison with the record
25 keeping, I think that this broker-dealer

Anthony

was in the worst shape that I had ever seen and that I could ever imagine.

The last audit had been a year and a half before it as I recall it and there were just no postings -- yet the proprietor was insisting that there was a substantial net worth if we could only marshal the assets.

Therefore, we had, as I saw it, basically three or four main tasks here. One was to marshal the assets as promptly as we could and that included -- claims against the assets which were multiplying.

Second, was to make the effort to determine what was the true state of this broker-dealer and third was to preserve the status quo so that if it turned out that Mr. Massiello's estimates were overly optimistic and that company was truly insolvent, that claims for preference would not be lost.

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Anthony

Finally, we had the problem of dealing with the tax situation of this company. I should say that the tax situation was such that there was an indictment returned in the Southern District based on the facts involved here.

On the marshalling of the assets, we resisted a number of claims in court. I particularly recall the Shields claim where an attachment was vacated and where the result was that we succeeded in releasing over \$300,000 in funds that were at the Franklin National Bank.

All told, this goes to the issue of benefits and its sketched out in one of the last pages of the petition here.

We marshalled some \$384,000 in cash and some \$350,000 in the stock value.

We also, of course, were

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Anthony

involved in the complex task of inventorying the stock which was lying all over the place.

I should say that was not just a matter of trying to take certificates and add them up because to the extent that certificates were earmarked it was critical that you make a record of that and preserve the rights of customers.

The task of trying to find out what the financial condition was was complicated by the general state of Wall Street at that time.

We are all aware of the back office collapse. This was perhaps the most graphic example.

Mr. Masiello believed and stated or at least stated that he was owed substantial amounts of money by Chemical bank. It took us some six weeks before Chemical would by looking at the record of what securities it

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had received and what it had done
with them, advised that far from owing
James Anthony money, Chemical Bank
was owed money.

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This was a process that was
repeated over and over again. It
wasn't simply a matter of turning your
accounts books and saying try to
confirm either entries or slips in the
office or confirm what Mr. Massiello
was saying.

You had to do the pressing
yourself because otherwise you'd get
absolutely no response from Wall
Street.

We had, I note in the affi-
davit some three hundred calls from
various claims that we took care of
during this period.

The court proceedings are
sketched out in the affidavit. The
complex tax proceedings which re-
sulted in our vacating a levy by

Anthony

the government in the amount of
\$1,057,000 as set forth.

My firm is particularly expert
in tax matters and we continued even
after the trustee was appointed in
giving advice concerning the IRS
assessments.

In answer to one of your Honor's
questions, we keep a computerized diary
entry of the type that was described
for Weil, Gotshal & Manges, it became
increasingly apparent that this company
was under water.

I brought Prof. Seligson in very
early because I wanted to be absolutely
certain that notwithstanding the S.E.C.
decision that this should be an equity
receivership, that if it became neces-
sary to have a bankruptcy that all
rights would be preserved.

During this period Prof.
Seligson consulted with me personally
to make sure that we were going to be

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Anthony

positioning this company so if a bankruptcy became necessary, that rights would not be lost.

At that point, when it became painfully apparent that unless a petition was filed, preference claims could run and so one, we, with Prof. Seligson, arranged for the filing of the petition.

I should say that in hindsight it's clear that this should have been in bankruptcy to begin with, but the S.E.C.'s normal preference is to go for equity receiverships which are very awkward vehicles to deal with any kind of reorganization or liquidation.

They just don't have the powers which you would have in a bankruptcy.

It was grueling, difficult work: A lot of ~~twi~~was work which could be done by associates and we followed the practice, I personally, have

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2 Anthony

3 Q Besides the Interest Equalization
4 Tax Matter, which I gather is still open,
5 are there any other tax matters that are still
6 open?

7 A Not that I know of.

8 Our responsibility on this matter
9 was assumed by others. So that I can't answer
10 that.

11 MR.SARNO: I have no further
12 questions.

13 MR. FEINCERTZ: We have Mr. Ira
14 Weisman, a partner in the firm of
15 Sobel, Weisman & Co., functioning as
16 accountants to the trustee.

17 Would Your Honor like Mr.
18 Weisman to testify with respect to
19 his application?

20 MR. KLEIN: B. Bernard Greidinger
21 & Co., Hertz, Herson & Co. now, the
22 successor firm, we were the accountants
23 to the Chapter XI receiver.

24 I R A

W E I S M A N,

25 Called as a witness, having

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been first duly sworn by the

Judge, was examined and testified
as follows:

THE JUDGE: If you can briefly
follow the procedure that you have
heard, you can do that.

THE WITNESS: In approximately
October 1970 we were retained by
the trustee to take over the accounting
procedures of the bankrupt and the
estate.

As was portrayed here by the
gentlemen before me, irrespective of
what conditions were prior to our
time, we came in and the records were
in a horrendous situation.

We had many problems in
reconstructing them and sorting them
to find out exactly what we had, which
took considerable time.

We expended a tremendous amount
of time in preparing ourselves to go
into the record and to try to examine

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them and from that point on, I think we took them over, we found a situation similar to that that was expressed here in that the records were -- some were in good shape and some were piled high in the office that was rented.

We had to get them together. We found checks all over the place, we found stock certificates and the like. What we could assemble and garner together, we did.

From that point on, what we performed, in addition to all the normal accounting procedures, we had to get together the examinations.

We spent considerable time on the examinations of the claims and the questionnaires.

We spent time not only in the office of the bankrupt but we did -- I should say the trustee for the bankrupt but also in the courthouse in trying to compile the claims,

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questionnaires and to compare them to
find out exactly those that were good,
those that were bad and those sort of
in between.

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We filed many reports on the
findings of fact and conclusions of
law for the trustee and the special
counsel. We spent considerable time
on that. I might add that we have
had the experience and we have done
bankruptcy before. Before this we
have also done bankruptcy in several
stock brokerage concerns.

I have never seen from my ...
experience conditions as bad as they
were in this situation.

We did a lot of reconstructing.
I don't want to drag this out for too
long, we spent considerable time in
reconstructing the entire problem that
we had here. We had the government
reports that we had to file. We had
to file the reports based upon our own

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Anthony

findings for the attorneys so that they could be prepared for the court.

We spent, I think, valuable time as was expressed prior regarding certain large claims which we were able to come up with some objections to people's claims.

Not in a legal sense but in an accounting sense and we spent considerable time regarding the Massiellos and their problems and again, for submission for the determination of the counsel who retained us.

All these services were performed under difficult tasks. Many of the records were missing, they were incomplete but we did as thorough a job as possible under the circumstances.

Where we couldn't do a thorough job on the accounting records we made sure that we went to the claims that were filed as far as the ones that were good and those that were bad and

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Anthony

we examined every piece of evidence that we could to be able to report to the counsel what we felt were the proper claims in the matter.

Other than that, I could go on and go into specifics.

THE JUDGE: No, I think I have glanced at your papers. I think I have obtained a sense of the difficulties that were involved. I am observing your application and I gather that you have been paid one interim allowance of \$25,000?

THE WITNESS: I think that was sometime ago, yes.

THE JUDGE: What you are asking for now is what?

THE WITNESS: \$35,000 and I call your attention to the fact that we have to the date of our application here out of pocket, including the salaries, of course, what we have is strictly salaries for our men and myself

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Anthony

and my other partner who worked on the account for quite sometime, that we have had direct out of pocket expenses of \$80,000.

I think attached to our application also we have our complete time record as far as our hours per category and by the date.

We have listed it completely.

THE JUDGE: What you are really asking for is an additional interim allowance of \$35,000 against the balance that is due?

THE WITNESS: Yes, that's right.

THE JUDGE: Any questions of this witness?

EXAMINATION BY MR. SARNO:

Q You succeeded from the account-
ants for the equity receiver, is that right?

A Yes.

Q Did you say you found stocks,
stock certificates and checks?

A Evidently what happened, it might

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Anthony

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have been an accumulation but when we entered
the premises where they were kept, we did find
-- evidently, I don't know whether they were moved
to this location from another location prior to
this but we did find a tremendous amount of,
let's call it, junk piled in the office.

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Amongst this we found many certi-
ficates and I guess there were dividend checks
which we, of course, turned over to the trustee.

MR. SARNO: I have no further
questions.

THE JUDGE: Any other questions?

(No response.)

THE JUDGE: There being none,
thank you.

All right, Mr. Klein.

EXAMINATION BY THE JUDGE:

Q What is your full name?

A Jerry B. Klein. I am a partner
in the firm of Hertz, Herson & Co., successor
to B. Bernard Greidinger & Co.

We were appointed by Referee
Lowenthal in August, 1969 in connection with

1 Anthony

2
3 the Chapter XI proceedings.

4 I might add as a beginning point,
5 Peat, Marwick, Mitchell who were the accountants
6 in the equity receivership refused to continue
7 because of the state of the records and the
8 problems that were encountered.

9 We unfortunately undertook the
10 mission after them.

11 There is no sense going on into
12 a detailed recitation as to the condition of
13 the records, but this was the first blush when
14 nothing was in its rightful state.

15 There was virtually chaos as to what
16 the assets were, what the records consisted of
17 and what the state of affairs were.

18 It was virtually unknown. I'd
19 like to mention all the things that Alan
20 Miller had said.

21 We virtually had put in hundreds
22 and hundreds of hours working day and night
23 reconstructing all these different affairs.
24 The numbers of reports, letters, correspondence,
25 numbered into the thousand.

Anthony

This was in preparation of determining financial position and marshalling the assets.

We have heard mention of the securities count. We made the original count of securities which took virtually a week. Security by security for specific identification. We systemized these and put them on a data processing computerized system, which was turned over to the trustee in bankruptcy from which they made their examination.

We had uncovered directly securities in the files that were not turned over to the receiver that must have approximated about \$40,000 directly.

We had every uncovered cash that was not deposited, old stale checks, at least \$10,000. There were numerous instances, bank statements were not opened up for periods of over a year.

We tried to examine, we opened up these -- we sorted them, we put them in order. We uncovered items that were improperly charged

June 4, 1974 Hearing on Applications for Allowances

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Anthony

against the debtor's accounts that belonged to other depositors.

Hopefully these -- in some instances the monies were recovered, in others they were not.

I would like to make reference to a report we had rendered, the major report, to the receiver which sets forth all the information you have heard here today which goes back to 1970, which earmarked the receivables, the recoveries, all the problems involving customers, brokerage accounts, Bruns Nordeman, the Massiellos.

I would like to incorporate this by reference to what our services rendered, along with our application for fees.

I would like to indicate in terms of the securities, there were over four hundred issues, thousands of pieces of paper. There were customers making demand for this specifically identifiable property.

I think this is in summary repetitious of what has been said here before but it is

1 June 4, 1974 Hearing on Applications for Allowances⁹⁴
2 Anthony

3 indicative of what happened and I think we
4 were the first team that were faced with the
5 problems

6 There was massive jobs that were
7 necessary to reconstruct receivables and all the
8 other books of account which were virtually,
9 the blotters and the receivables and the cash
10 books were virtually non-existent.

11 There was no help from the outside.
12 We prepared tax refund claims, we prepared the
13 payroll tax reports where no one else was avail-
14 able to do these things with all the governmental
15 bodies breathing down our necks.

16 I think there was just a thousand
17 different items just keeping the receivership
18 and the Chapter XI proceedings moving to the
19 point where the -- Mr. Busch came in and took
20 over. I'd like to be brief and just indicate
21 insofar as our time, we have exceeded our
22 order and we have accumulated some \$65,766 in
23 time which went beyond the termination of --
24 or appointment of Mr. Busch.

25 THE JUDGE: What was the

June 4, 1974 Hearing on Applications for Allowances

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Anthony

amount authorized previously?

THE WITNESS: There was a
\$35,000 maximum, at the time of the
maximum allowance Referee Lowenthal
was sick and so was I. The original
application we had put in for was
\$50,000. Referee Lowenthal made
the \$35,000 -- for leave to come back
for additional fees.

Of the additional sum which
exceeded the order, there was almost
\$15,000 that was expended in connec-
tion with services that were required
to be rendered in connection with the
reports to Mr. Busch and for the
receiver, which commenced from
February to about May of 1970.

There were substantial addition-
al services in facilitating the transi-
tion of the administrations.

THE JUDGE: From the Chapter
XI to the straight bankruptcy?

THE WITNESS: That's correct.

June 4, 1974 Hearing on Applications for Allowances

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Anthony

Our fee structure that has been charged here is the ten percent to twenty percent less than going rates at that time, in view of the fact that we had exceeded the order we reduced the amounts for those rates at that time.

Our rates now are substantially higher than what we find here now. I might add that we are in four SIPC proceedings where our rates are much higher, substantially higher.

In fact, I am a trustee in one of the proceedings directly. I think this is in essence and I'd like to just say that the progress with which this estate has been handled has been due in large measure in my opinion through the efforts of Weil, Gotshal & Mr. Miller particularly and our office which worked extremely hard in rendering these services.

THE JUDGE: Does anyone care

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Anthony

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to inquire of this witness?

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MR. SARNO: No.

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THE JUDGE: Are there any other
interested parties that want to be
heard in connection with these
applications for allowances?

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MR. SARNO: May I just be
briefly heard, very briefly.

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I represent Glore Staats
Corp. which is as I explained a
stock broker whose claim has been
allowed and we believe that we were
trading as a principal and not for a
customer.

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Therefore, vis-a-vis the
bankrupt, we are a customer of the
bankrupt. So that whatever decisions
is made in the trustee's position that
brokers who were trading as brokers
and not as principals are not entitled
to be included in that class of cus-
tomers' claims, we believe we will
because we were trading for almost

ORIGINAL CERTIFICATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter : In Bankruptcy

-of- : No. 69 B 425

JAMES ANTHONY & CO., INC. :

Bankrupt. :

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CERTIFICATE AUTHORIZING INTERIM AND FINAL
ALLOWANCES PURSUANT TO RULE 16(c) of THE
BANKRUPTCY RULES, S.D.N.Y.

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK:

James Anthony & Co., Inc., the bankrupt was an over-the-counter broker and the proceedings commenced on application of the Securities & Exchange Commission for the appointment of an equity receiver. The equity receiver was appointed in February 1969 and operated for over a year in that capacity. Thereafter the proceeding was transferred into a Chapter XI of the Bankruptcy Act and after operating in that posture for a number of months, the Chapter XI proceedings aborted and James Anthony & Co. Inc., was adjudicated bankrupt, and a trustee appointed. Presently there are applications for an allowance by the equity receiver, his counsels and accountants, who were authorized by the court to assist the equity receiver. The Chapter XI debtor-in-possession, the same person who was equity receiver, counsels and accountants authorized to assist during that proceeding also seek allowances. Finally the trustee in Bankruptcy, counsel for the trustee, special counsel to the trustee and accountants appointed to assist the trustee seek

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No. 69 B 425

interim allowances.

A hearing was held on all applications for allowances both final and interim on June 4, 1974 and attorneys or accountants testified in connection with the reasonableness of their applications, and creditors were invited to interrogate those who testified. Ordinarily interim allowances are not the rule in a straight bankruptcy proceedings and applications are considered at the closing of the estate. At that time the court can ascertain the number of professional hours spent, the value of such time and effort to the bankrupt estate and grant allowances on the basis of funds available and the relation of those services to the end-result. However, the instant case commenced in 1969 and five years have elapsed since then. In the meantime a tremendous amount of professional services have been rendered both to the equity receiver, the Chapter XI debtor-in-possession and the bankrupt. It would be a very heavy burden for these professionals to await final disposition of the matter or to continue with any zeal if the applications for interim allowances were not acted upon. According to the testimony and evidence before me, there exists presently a cash fund of some three quarter of a million dollars plus securities valued over \$300,000 for eventual distribution by way of administration expenses and payment to the various claimants, priority, non-priority as well as to investors under 60e of the Bankruptcy Act. The applications for allowances both final and interim amount to approximately \$400,000. It is this court's judgment that allowances in that amount at the

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present time would be inappropriate in view of all the circumstances. It is my intention to discuss each application in order and recommend to the District Court an amount which I consider to be fair and reasonable as an allowance at this time, some final, some interim based on the services performed and the contribution to the estate as it is presently constituted.

It is appropriate before treating with the various applications to describe the state of affairs at the commencement of these proceedings when the District Court appointed the equity receiver. Based on affidavits attached to the various applications and from the testimony taken by me on the June 4th hearing on such applications, it is clear that the James Anthony Co., Inc. in the course of conducting its brokerage operations suffered from the same back office problems that most leading brokerage houses did at or about that time. That problem was compounded by the haphazard manner in which the Anthony Company kept its ordinary books and records, the manner in which it recorded checks, handled securities, dealt with dividend checks, orders from customers and the records of customers showing how much owed by them, how much due them and what security belong to the various individual and brokerage customers.

The testimony before me by the lawyers and accountants, in relating their first encounter with the records of the Anthony Company described the scene as if the brokerage house records had been in a wind tunnel, strewn all over in a helter skelter fashion. Obviously the amount of work necessary to just get records in order before any meaningful proceedings could get under way was simply enormous. The operation of this

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company was so reckless, that a grand jury investigation was commenced to look into very serious charges which grew out of the initial complaint of the Securities & Exchange Commission and other information that was uncovered with respect to the Masiello family which owned and operated the James Anthony & Co., Inc.

APPLICATION FOR ALLOWANCES BY JOHN T. COLLINS IN
HIS CAPACITY AS EQUITY RECEIVER AND CHAPTER XI RECEIVER

The applicant was appointed by Chief Judge Edelstein on February 28, 1969 as an equity receiver of all of the assets and properties owned beneficially or otherwise by James Anthony & Co., Inc. In his report, the applicant gives an accounting and makes application for allowances in two parts. Part one covers the period between February 28, 1969, the date of his commencement as Equity Receiver to June 20, 1969, the commencement of the Chapter XI proceedings. Part two covers the period between June 20, 1969 to February 2, 1970, the date when James Anthony & Co., Inc was adjudged a bankrupt. The applicant's report of his stewardship as equity receiver treats in considerable detail the services he performed. It is clear from his report, as well as others, counsel and accountants, that the books and records of James Anthony were in a chaotic state and required great ingenuity and effort to determine the true financial status of the bankrupt.

As Equity Receiver, the applicant was directly involved in defending law suits brought by the Securities & Exchange Commission, various brokerage houses and banks. Considerable time was involved in determining the obligations of

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the bankrupt regarding Federal income tax returns, withholding tax obligations and the accountability for the sums withheld. The applicant was also deeply involved with taxing authorities at the state and city level. He was also required to make determinations for Fails to Deliver, Fails to Receive as they appeared on the bankrupt's books. His attendance was essential at various conferences with Chief Judge Edelstein, the Securities and Exchange Commission and with principals and counsel for various litigants in suits by and against the bankrupt. As Equity Receiver, the applicant received \$484,591.44 in receipts and made disbursements in the amount of \$44,909.41. When his position as Equity Receiver terminated, he turned the cash in his possession over to himself as Receiver under the Chapter XI proceedings, and it amounted to \$439,602.03. For his services as Equity Receiver he request an allowance of \$15,000.

On January 20, 1969, he commenced to operate as a Receiver under Chapter XI having been appointed by Constance Baker Motley, United States District Court Judge. In the Chapter XI proceedings no authority was applied for nor received to operate the business as a debtor-in-possession. The applicant in his new capacity continued to straighten out the affairs of the bankrupt marshalling and safeguarding its assets and reconstructed the books and records in order to ascertain the financial condition of the bankrupt's estate. He arranged to move the offices of the bankrupt from the premises formerly occupied by it at 76 Beaver Street to less expensive space at

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30 Church Street. The applicant abandoned unnecessary and burdensome property and arranged for the sale at public auction of certain personal property no longer necessary. After making a complete inventory of the stock certificates in the bankrupt's possession he applied for and obtained authority to sell securities owned or registered in the bankrupt's name which was not earmarked for the account for any of its customers so as to take advantage of the then favorable market conditions. This activity was a very important part of his administration. He also participated in and supervised the activities of others in negotiating with customers, broker-dealers and others in ascertaining to whom the various stock certificates belong. He participated in the investigation of members of the Masiello family who controlled the bankrupt James Anthony & Co., Inc. The result of that investigation is more fully described in other applications of Weil Gotshal & Manges and Martin J. Bush, subsequently trustee of the bankruptcy estate. Again, the applicant became involved in the bankrupt's problems with the Internal Revenue Service involving excise taxes, penalties asserted against the bankrupt's account of alleged violations of interest equalization tax. He also directed the preparation of payroll withholding taxes, unemployment insurance and other tax returns which were due from the bankrupt, the equity receiver and the receiver to the United States of America, the State of New York and the City of New York for the period from February 1969 to February 1970.

The total cash receipts of the applicant as receiver

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in the Chapter XI proceedings based upon the monies disbursed to others or turned over by the applicant to the trustee in bankruptcy as follows:

Cash disbursed by the Receiver	\$1,046,107.16
Securities (approximate value as of January 30, 1970)	375,000.00

For these services he requests a total of \$14,301.07.

This amount appears to be accurately calculated within the formula set forth in the Bankruptcy Act.

The applicant's report, accounting and application adequately describes the enormity of the task he undertook, that he skillfully and faithfully performed the essential services required of him, all of which enured to the benefit of the bankrupt's estate.

Considering the amount of effort and the skill involved, I recommend that the applicant be allowed compensation for his services rendered as an Equity Receiver and Receiver in the Chapter XI proceedings in the amount requested, namely \$29,301.07.

APPLICATION BY PAUL WEISS RIFKIND HARTON & GARRISON
GENERAL COUNSEL FOR EQUITY RECEIVER AND SPECIAL COUNSEL
FOR CHAPTER XI RECEIVER

This application is made for an allowance of compensation for professional services rendered as General Counsel to the estate from February 28, 1969 through July 3, 1969, while John Collins was acting as Equity Receiver and from July 3, 1969 through February 3, 1970 as special tax counsel

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while John Collins was acting in the capacity of Receiver under the Chapter XI proceedings.

While acting in the capacity of General Counsel to the Equity Receiver, the applicant undertook what appeared to be an absolutely impossible task of coming up with an estimate of the financial condition of the bankrupt. As has been stated in other applications, the chaotic condition of the bankrupt's records required ingenuity and an abundance of time in order to forecast the bankrupt's net worth. Not only were the bankrupt's books in shambles, and of little assistance, but there was a breakdown in record keeping throughout the securities industry. The applicant, the Receiver and later his accountants and employees were completely frustrated and delayed in trying to rebuild the bankrupt's books by requesting confirmation from other brokers. As an example of the applicant's steps to judge the full extent of the crisis and the way it affected the Receiver, the applicant points to the fact that it required six weeks of persistent requests to obtain an accounting by Chemical Bank of the securities which the bankrupt had delivered to it prior to the receivership. Even in the highest quarters of Wall Street, the bookkeeping system had fallen apart.

One of the applicant's first steps was to determine the identity of the assets which were on hand and to prevent their removal. Two attorneys of the applicant were assigned full-time and physically assisted the Receiver and its personnel in searching the bankrupt's premises and to create an in-

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ventory of the securities found there. The application describes in detail the nature of that work and the success obtained in sorting out the mess in which the bankrupt was involved. The application deals with the problems involving Chemical Bank, Shields & Co., F. S. Donohue, Santo & Co., Franklin National Bank, and other broker-dealers. The description of its work involving confirmations of open transactions of the bankrupt is impressive, and involved the preparation of schedules of Fails to Deliver, Fails to Receive relating to 677 brokers having open transactions with the bankrupt.

The application also relates to suits and proceedings not instituted in the Bankruptcy Court in which the bankrupt was a defendant. The defense of such litigation required the usual court attendance and preparation, etc.

Another important contribution by the applicant is set forth in considerable detail involving tax work and tax suits. One of the most important contributions was its successful resolution of a lien asserted by the Internal Revenue Service against the estate involving over \$1,000,000 and a charge that the president of the bankrupt wilfully evaded payments of interest equalization taxes due under certain provisions of the Internal Revenue Code. There is a detailed description of the professional services involved, its communication with Internal Revenue, the United States Attorney's Office and finally the success of having the levy withdrawn. Other services were performed in connection with various state and

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local tax liabilities.

During the performance of its services, both as General Counsel and special counsel, there is described the consultation with other counsel and accountants and the results of those consultations.

For the services performed and described in the application, there is requested the sum of \$36,984. The applicant claims for the period covered by the application it had expended 924 hours of which 878 hours represented the time of associates. I am satisfied that the amount of time claimed was spent in the performance of the professional services described and that such services were necessary and skillfully performed.

I recommend payment in the full amount requested, namely; \$36,984. The applicant is no longer performing any services for the estate.

APPLICATION OF SELIGSON & MORRIS, SPECIAL COUNSEL
TO EQUITY RECEIVER AND GENERAL COUNSEL TO RECEIVER
IN CHAPTER XI PROCEEDING

On March 3, 1969, the applicant was appointed special counsel to the Equity Receiver and on July 3, 1969, the date when the Equity Receiver was appointed as Receiver in the Chapter XI proceedings, the applicant became General Counsel in those proceedings. The applicant performed services in both capacities from March 3, 1969 to and including December 1, 1969.

Similar to the application of the Equity Receiver counsel breaks down its application into two parts. Part

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one relates in considerable detail the professional services performed for the Equity Receiver while he acted as Special Counsel. The applicant defended the Equity Receiver in certain law suits that were brought against him, obtained restraining orders against all known creditors of the bankrupt in order to control that litigation and preserve the assets of the estate and restrained those litigants who had obtained judgments from executing against the property of the bankrupt. There was day-to-day activity in which the applicant acted in the interest of the Receiver and advised the Receiver as to what action that should be taken. Because of the chaotic condition of the bankrupt's books, the first order of business was to determine the solvency or insolvency of the bankrupt. In the course of making that determination, professional services were performed in examining certain transactions between the bankrupt and certain of his creditors, including the judgment lien creditors. It was essential that determination be made within four months of the appointment of the Equity Receiver lest certain liens become perfected at the expiration of that time. Finally, the applicant advised the Equity Receiver that its best course would be to commence a proceeding under the Bankruptcy Act. Then on that advice the Equity Receiver did obtain an order modifying an existing restraining order and it was permitted to file a petition under the Bankruptcy Act under Chapter XI. The applicant prepared the necessary orders and consulted with an attorney who was retained as special counsel to the bankrupt who in turn prepared the

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petition under Chapter XI.

The second part of this application dealt with the applicant's activities while the bankruptcy was operating under Chapter XI. Whereas, it was special counsel to the Equity Receiver it became General Counsel to the Receiver in Chapter XI proceeding. The application recites in detail the many and varied activities which it performed on behalf of the Chapter XI Receiver, all of which were necessary and skillfully performed. An accountancy firm was engaged with the approval of the court. An inventory of all cash, certificates of deposit, stock certificates, furniture and fixtures and equipment was made. The applicant prepared the appropriate papers for the sale of personal property that was no longer needed and also advised the accountant of the Receiver as to the proper establishment of the inventory of stock certificates in the Receiver's possession. Much time was spent on this task and its successful completion was of considerable value to the estate. The applicant provided the necessary professional service in removing the offices of the bankrupt from an expensive location to one of modest cost, but sufficient to perform those necessary services required of the Receiver in Chapter XI.

The applicant also conferred and advised Paul Weiss Rifkind Wharton & Garrison, Special Counsel to the Receiver, handling all aspects of Internal Revenue Service claims and other tax problems.

A considerable amount of professional time and effort was involved in the investigation into the facts and circum-

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stances surrounding the bankrupt's financial failure; at the time it was necessary to coordinate that investigation with an investigation being conducted by the Receiver's accountants. This phase included the examination of fifteen designated persons and centered on the Masiello family. The application treats in considerable detail the nature of the investigation and its success in discovering assets and the basis for further action against such individuals. The investigative phase of the duties of the applicant as counsel to the Receiver was extraordinarily difficult and consumed a tremendous amount of time. The Chapter XI proceedings terminated before the investigation was fully completed; however, the valuable contribution made by the investigation and all evidence obtained thereby was turned over to the counsel for the trustee in bankruptcy. In addition to securities which were turned over to the trustee in bankruptcy having a value of \$376,000, almost \$600,000 in cash was also turned over. Thus, as a result of the efforts of the Receiver and the Equity Receiver and the applicant, almost one million dollars was transferred to the trustee in bankruptcy.

The applicant seeks compensation in the amount of \$33,421.25. That amount is based on 572 hours of professional time calculated at hourly rates ranging from \$125 an hour to \$35 an hour. The vast majority of the time was billed at rates of \$35 an hour to \$55 an hour. The professional services performed were of extremely high quality and the results obtained would fortify that view. Since the applicant's services no

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longer continue, I recommend payment in the amounts sought of \$33,421.25, plus disbursements in the amount of \$749.28 which were actual and necessary in connection with the professional services rendered.

APPLICATION FOR FINAL ALLOWANCES OF COMPENSATION
FOR ATTORNEYS FOR THE CHAPTER XI RECEIVER

The previous application of Seligson & Morris dealt with services up to December 1, 1970. The same attorneys who performed the services under that application joined the firm of Weil, Gotshal & Manges just prior to December 1, 1970, and continued to perform the services described in the previous application. Between December 1, 1969 and the present time the applicant claims to have expended an additional 184 hours in professional services all of which was necessary and actually rendered to the Receiver in accordance with his instructions and requests. Again, the majority of time spent was billed at the rate between \$55 and \$65 an hour. An examination of this application and the Seligson & Morris application offers sufficient support for the allowances sought. I recommend payment in the amount of \$11,042.50.

APPLICATION OF IRVING SCHNEIDER, SPECIAL COUNSEL TO
THE JAMES ANTHONY & CO., INC. AS DEBTOR-IN-POSSESSION
UNDER CHAPTER XI

On June 4, 1969, the applicant was appointed Special Bankruptcy Counsel to the bankrupt for the purpose of filing a petition for an arrangement under Chapter XI of the Bankruptcy Act.

The four-month period for the avoidance of preferential transfers expired on or about June 24, 1969, and the ap-

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plicant therefore claims that time was of great urgency and it was necessary for him to spend days and nights obtaining adequate data to prepare the necessary papers for the Chapter XI petition. He was compelled to consult with the bankrupt's general counsel, the Receiver, Special Counsel and accountants in order to obtain the material necessary to complete this task. It is claimed that as a result of his quick and efficient performance, the Receiver subsequently was able to avoid preferences which resulted in an increase to the estate of assets amounting to approximately \$150,000. The applicant discussed the advice rendered as to the desirability of filing a Chapter XI proceeding rather than straight bankruptcy. There is no doubt that the work of the applicant was condensed into a short period of time during which schedules annexed to the petition were prepared and because of the poor record keeping of the bankrupt the applicant was compelled to work very closely with the court-appointed accountants and attorneys and the Securities and Exchange Commission. He attended to the publication as required by the statute and a notice of the 30 larger creditors with whom he met later for several hours. He claimed to be instrumental in having the bankrupt consent to Mr. Collins, the Equity Receiver, to be appointed as the Receiver in the Chapter XI proceeding. The applicant also conferred with the members of the Masiello family to determine the existence of any additional assets which might exist in the form of various choses in action against brokers and others for failure to deliver.

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He attended hearings in the Chapter XI proceedings involving indemnity, first meetings, election of creditors' committee, etc. He appeared at the various examination of the members of the Masiello family conducted under 21a of the Bankruptcy Act. The applicant claims to have spent a number of hours with the bankrupt (debtor) and its general counsel discussing the formulation of a plan of arrangement. It is also claimed that he spent a considerable amount of time studying the records of the National Association of Securities Dealers, as well as an audit made of the debtor's books, all in preparation of submitting a plan of arrangement. The Chapter XI proceedings aborted before any plan was submitted.

For all of these services the applicant requests compensation in the amount of \$10,000 and disbursements in the amount of \$68.75. The application does not contain any statement as to the exact number of hours of professional time spent by Special Counsel, but I am informed by the applicant that his records will show at least 150 hours in this endeavor. The application adequately describes the services performed and I have no doubt that they were necessary. The real contributions made by the applicant was the quick and efficient manner in which he was able to gather the necessary information and file a Chapter XI petition. Most of the value of his services was involved in that brief period of time. I consider the fair and reasonable value of such services to be \$7,000 and recommend payment in that amount. I also recommend the payment of the disbursement of \$68.75

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APPLICATION FOR COMPENSATION BY BERNARD GRIDINGER
OF HERTZ, HERSON & COMPANY, ACCOUNTANTS TO JOHN T.
COLLINS, RECEIVER UNDER CHAPTER XI PROCEEDINGS

The applicant was authorized by court order to perform accounting services for the Chapter XI Receiver and the initial order provided for maximum compensation of \$10,000. That order was amended from time to time authorizing the maximum of \$35,000. The application sets forth the accounting services performed at the request of the Receiver and his counsel both general and special. Again, the services performed were complicated by the condition of the bankrupt's books and the accounting and recording deficiencies therein. The applicant claims to have spent considerable time in reconstructing the records in order to make a determination of its financial position and the net capital. He was involved in the direct monitoring and control over the day-by-day activities and made a massive effort in undertaking to locate, assemble, record and recreate the financial records to such a state as would permit the general investigation of the acts, conduct and business of the James Anthony & Co., Inc. There is described an in-depth review which was made, particular emphasis being paid to items dealing with cash, securities, and receivables from customers, broker-dealers and others. His application describes in paragraph 12 all of the accounting and investigative services rendered in 21 separate paragraphs and relate to inventory, tax returns investigations, meetings, review of financial transactions, claims, etc.

In connection with the services rendered, the applicant claims to have expended 2,203 hours and at the hourly rate

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best described in the application ranging from \$15 to \$75 per hour. He claims that the reasonable value of such services amounts to \$63,766. In his application it is admitted that \$14,703 were for services subsequent to February 2, 1970 after the Chapter XI proceeding had aborted. The order appointing the applicant appears to be limited to his services as an accountant for the Chapter XI debtor-in-possession. It is unnecessary on the present state of the record to determine whether or not compensation should be allowed in the amount requested inasmuch as authorization was granted only up to \$50,000. Since no compensation has been paid to now I recommend an interim allowance in the amount of \$35,000 plus disbursements of \$225.00 without prejudice to the applicant to apply for additional compensation if it can establish that the services performed were authorized or can be authorized in an amount greater than the \$50,000 already fixed as maximum compensation.

APPLICATION FOR ALLOWANCE OF SODEL WEISMANN & CO.,
AS ACCOUNTANTS FOR THE TRUSTEE IN BANKRUPTCY

The applicants were retained by Martin J. Bush, the trustee in bankruptcy, on or about October 13, 1970 pursuant to an order of this court. Such an order authorized a fee not to exceed \$25,000. Thereafter an application was made to the court to increase authorized allowances in an amount not to exceed \$60,000 and such orders authorized that limit. Subsequently, an application was made to increase the amount of possible allowances to \$118,325. However, that authorization has not been granted. This application requests compen-

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sation in the amount of \$118,325. It claims that the applicants have an out-of-pocket expense to date, inclusive of salary paid to accountants, other than members of its own firm of approximately \$80,000. On November 16, 1971 this court granted the applicants an interim allowance of \$25,000. Attached to the application is a time record of the number of hours spent by the accountants who have worked on this matter, and for the period August 27, 1970 through December 31, 1973, it claims to have spent 1,224 hours. Bearing in mind that the service of this accounting firm will probably continue and that a final application for compensation will be made at the closing of the estate, an interim allowance in the amount of \$35,000 is recommended.

APPLICATION FOR INTERIM ALLOWANCE TO SPECIAL COUNSEL
FOR TRUSTEE

Alex L. Rosen was appointed Special Counsel to the trustee on February 5, 1970 by order of Referee Herbert Loewenthal. He is recognized as an authority on the Bankruptcy Laws and particularly in the field of stock brokerage insolvencies wherein he has pioneered in the development of the law involved in such cases.

His application relates the massive investigations conducted by him through 21a examinations. There is described therein the pattern of fraud practiced by the Masiello family, Securities & Exchange Commission violations and the nature of the conspiracy to defraud and those persons involved in the carrying out the conspiracy. The applicant instituted suites,

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against Bruns Nordman a brokerage dealer to recover funds obtained through fraud as well as suits against the Masiello family and other broker dealers. He has also filed cross claims against many of the claimants who filed claims against the estate.

As part of his activities he recites the filing and serving of 54 Summons & Complaints relating to possible preferences and other causes of action. He has filed 78 objections to claims filed by broker dealers challenging the validity of such claims.

Each customer claimant position has been examined and findings of fact and conclusions of law have been prepared and are ready for submission to court.

There are 466 claims filed by customer claimants which have been investigated and processed by the applicant. It appears that customer claimants will be paid in full under 60e of the Bankruptcy Act.

✓ Work of applicant involved enormous detail, patience and skill to reach the results thus far obtained. His activities also involved conferences with National Association of Security Dealers, the Securities & Exchange Commission, accountants and attorneys for equity receiver, receiver and trustee.

The application and the materials attached thereto are persuasive evidence of the enormity of the task and the high quality of professional services performed by the applicant. Up to the present these services involved preserving the assets rather than enhancing them. However, pending litigation might well increase the total of the assets being brought

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into the estate and credit for such result can await consideration of final allowances.

The applicant claims to have spent 243 hours in court appearances and 1027 hours on other services. Under his normal fee schedule such time and services would be billed at approximately \$150,000. In this application he requests \$125,000 as an interim allowance.

At this stage of the proceedings, the court can only evaluate the services by results achieved thus far. I am satisfied that the services claimed were satisfactorily performed, that they were necessary and contributed substantially to the present favorable posture of the case.

In light of all the matters involved in this most complex proceeding, it is felt that a fair and reasonable interim allowance in the amount of \$70,000 be paid to the applicant and it is so recommended to the court.

APPLICATION FOR INTERIM ALLOWANCE BY NEIL MORRITT,
GENERAL COUNSEL TO THE TRUSTEE

Neil Morritt, General Counsel to trustee, Martin Bush was retained pursuant to order of Referee Herbert Loewenthal on February 5, 1970.

Since that date up to the present time, the applicant has furnished professional services necessary to marshall the assets of the estate, invest them and to pursue a variety of legal actions and remedies on behalf of the trustee.

As with all other applications for allowances in this

Original Certificate

proceeding, there is a detailed description of the complexity of the matters involved, the novelty of issues under 60e of the Bankruptcy Act involving insolvency of broker-dealers and the enormous detail of services required to bring order out of the chaos which confronted the various professionals assigned to that task.

The application also relates the routine but time consuming services necessary in servicing the trustee in a matter of this size and importance. These included the preparation of court papers, interim reports, the examination and handling of thousands of stock certificates and securities, computerized inventory check, responding to inquiries from public and other broker dealers, real estate arrangement, insurance, etc.

The applicant also was required to review transcripts relating to litigation being handled by other counsel, hearings before Judge Sugarman and Chief Judge Edelstein, matters involving the SEC and the handling of tax claims by Internal Revenue Service and State and local taxes. Considerable time was also spent by the applicant, together with his Special Tax Counsel in resolving the so called interest equalization tax claim.

Time was also expended in services connected with a grand jury investigation in the Southern District of Florida. That investigation concerned certain trading activities in securities by the James Anthony Co., and the applicant reviewed the situation and documents and cooperated with the Federal

Original Certificate

authorities.

The applicant reviewed his activities in connection with litigation instituted by him on behalf of the trustee against the Masiello family. Also he reviewed the suit instituted against Bruns Nordeman & Company. Both of these matters involved enormous expenditure of time and if successful will add substantially to the assets of the estate.

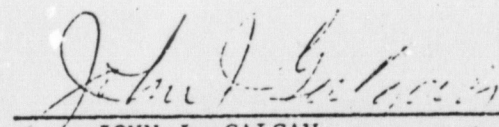
Over the four year period, the applicant has performed legal services in this matter he claims to have expended approximately 1660 hours. At the regular fee schedule usually charged, he claims to have earned \$132,250 but asks only \$125,000.

In light of all the facts and circumstances of this complex matter, it is felt that a fair and reasonable interim allowance at this time, after four years of service and no prior allowance having been granted would be \$70,000. It is recommended that an interim fee to the applicant be granted in that amount.

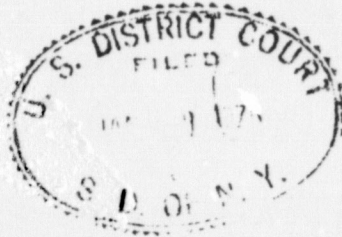
THE FOREGOING IS RESPECTFULLY SUBMITTED.

Dated: New York, New York

December *four*, 1974


JOHN J. GALGAY
Bankruptcy Judge

ORDER OF DISTRICT JUDGE CHARLES M. METZNER
REMANDING MATTER TO BANKRUPTCY JUDGE

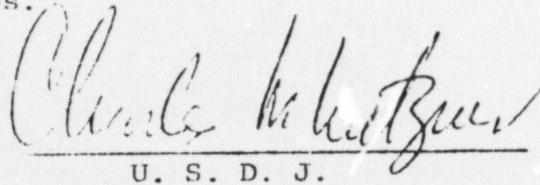


In the Matter of James Anthony & Co., Inc.,
Bankrupt, 69 B 425

This matter is returned to Bankruptcy Judge
John J. Galgay for further hearing and report on the
applications for counsel fees.

So ordered.

Dated: January 8, 1975


U. S. D. J.

1 JANUARY 28, 1975 HEARING BEFCRE BANKRUPTCY COURT ON REMAND

2 James

3 THE JUDGE: Gentlemen; I am
4 sure you are aware that I have filed
5 a recommendation with regard to allowances
6 that was forwarded to the District Court.

7 Judge Metzner, who was the
8 District Court Judge who received the
9 recommendations and he has returned the
10 matter to me for further hearing and a
11 further report.

12 His referral is brief, without
13 instructions, but I do understand some
14 of the problems that concerned him and
15 perhaps should concern me.

16 With respect to those areas,
17 I will try and indicate them to you so
18 that you can address yourself to those
19 problems.

20 One, with respect to the
21 receiver, while his application was
22 calculated in accordance with the
23 statutory formula, I am concerned whether
24 or not there was anything special about
25 his services, particularly where funds

1 January 28, 1975 Hearing before Bankruptcy Court on Remand 4
2 James

3 would be turned over by him as the
4 equity receiver to himself as the debtor
5 in possession receiver.

6 Whoever is going to represent
7 the trustee in these matters ought to
8 address himself to that.

9 Further, throughout all of your
10 applications there was reference to the
11 Massiello family. I think each group of
12 lawyers at one time or another represented
13 that they had conferred with the Massiello
14 families and that professional time was
15 spent in either interviewing them or de-
16 posing them or examining them before the
17 Bankruptcy Court.

18 I think it is required that I
19 make sure that there was no duplication
20 of effort that should not be examined more
21 closely so that the estate is not being
22 charged for similar services or services
23 that could have been -- information that
24 could have been obtained by the examina-
25 tion of the work of other attorneys that

1 January 28, 1975 Hearing before Bankruptcy Court on Remand⁵
2 James

3 preceded those making the application.

4 The other concern is the
5 change in positions as I recall the Paul,
6 Weiss, Rifkind firm had a position, I
7 think, as general counsel to the equity
8 receiver.

9 The Seligson-Morris firm was
10 special counsel in the initial stages.
11 Then when the matter was changed from
12 an equity receiver to a Chapter XI
13 debtor in possession, the position of
14 counsel was reversed or switched.

15 I'd like someone to address
16 themselves to that point to make certain
17 that there was no overlapping of
18 activity.

19 I would also like to have some-
20 one address themselves to the use of two
21 full-time attorneys I believe that were
22 involved in sorting the confused records
23 in the initial stages.

24 I think one of the applications
25 dealt with that representation.

January 28, 1975 Hearing before Bankruptcy Court on Remand

6

James

I would like to make certain that was not a duplication of work that the accountants were doing and that it was reasonably sure that it is professional legal services that were involved.

I think that's about the best guidelines I can give you. If you will address yourselves to those problems for the record, as soon as I get the record back, I will reconsider the allowances and report to the District Court.

I am sure as all of you are aware practicing in the bankruptcy area that economy has always been the watchword with respect to allowances.

Bearing in mind that the value of the estate currently has been represented to be in the neighborhood of \$1 million, these applications, some interim and some final, would come to somewhere around \$327,000, if my calculations are correct.

That is, my recommendations

January 28, 1975 Hearing before Bankruptcy Court on Remand

15

James

was a substantial net worth and we were spending our time meeting claims and trying to determine what the state of affairs was.

I have here and I would like to mark as an exhibit our diary entries because that will answer a number of these questions.

First, that our -- that there was no duplication with Mr. Massiello and very little of our time, if any, was spent in discussions with him.

Secondly, with respect to the question of whether there was duplication between our efforts and the efforts of the Seligson firm, the answer to that I would say was emphatically no, because when it became apparent to us that the company was likely insolvent, we sought out Mr. Seligson, who I considered to be the most prominent, most important, most wise of bankruptcy counsels and we did that because it had been our

125a

1 January 28, 1975 Hearing before Bankruptcy Court on Remand 16

2 James

3 experience in prior bankruptcy matters
4 that it was more economical to hire an
5 expert than for us to render that advice
6 ourselves.

7 I have had that experience
8 with the Seligson firm, now Weil,
9 Gotshal, in matters where we had clients
10 who could afford to pay anything.

11 We still felt that in the
12 interests of economy, that it was better
13 to seek his counsel than to render it
14 ourselves.

15 When Your Honor just skims
16 through, examines these diary entries,
17 you will see that our advice was not
18 addressed to the bankruptcy area in
19 which the Seligson firm gave their
20 advice,

21 The next question that per-
22 tains to us was whether or not we used
23 lawyers for clerical functions or whether
24 there was duplication between the lawyers
25 we used.

1 Januray 28, 1975 Hearing before Bankruptcy Court on Remand 25
James

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which Your Honor referred to and to
which Mr. Liman has alluded is the change
of counsel and the possibility of overlap
of services between the two counsel; that
is, the Paul, Weiss firm and ours.

I think if Your Honor will
refer to page 30 of the application of
Seligson and Morris and particularly
to paragraph 56 thereof, Your Honor will
note that under the heading of equity
receivership, the firm of Seligson and
Morris requests compensation in the
sum of \$2,725 for a total of twenty-
six hours during a four-month period.

THE JUDGE: What is the page
reference again?

MR. MILLER: Page 30.

I submit to Your Honor that
it is virtually impossible for us to
have duplicated the services rendered
by Mr. Liman's firm in view of the fact
that we have only requested an allowance
of compensation for twenty-six hours

1 Januray 28, 1975 Hearing before Bankruptcy Court on Rema
2 James

3 over a four-month period.

4 I would also like to bring to
5 Your Honor's attention and Prof. Seligson
6 is here today, the fact that the request
7 for compensation for his services was for
8 fifteen and a half hours.

9 In actuality, he expended a
10 good deal more time than that. We did
11 not have the records to establish more
12 than the fifteen and a half hours and so
13 we did not request it.

14 He appeared before Chief Judge
15 Sugarman and Judge Edelstein on four
16 separate occasions and he met with the
17 receiver, Mr. Collins, Mr. Liman and
18 Mr. Schneider in connection with the
19 filing of the Chapter XI petition and
20 as Your Honor can see, fifteen and a
21 half hours is diminimous.

22 Indeed, Mr. Liman just men-
23 tioned and the professor confirmed to
24 me, that they were on the telephone
25 many, many times, but as I have

1 Januray 28, 1975 Hearing before Bankruptcy Court on Remand 27
James

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indicated, we don't have the diary
entries and we have not asked for that
time, consistent with the rules and
practice in this court.

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I think the other time in-
volved was Harvey Miller's time. As
Your Honor can see, it is ten and a
half hours.

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In sum, there can be no
question that there is no request for
duplicate compensation.

12

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Now, I would pass onto the
Chapter XI proceeding aspect of it.

15

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As soon as the petition was
filed and Judge Motley appointed Mr.
Collins as the Chapter XI receiver, Mr.
Liman's firm indicated their preference
and we, our agreement to the reversal
of the role.

22

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24

That is to say, we became
the general counsel and his firm became
special counsel for tax purposes.

25

I must tell you that we had

1 January 28, 1975 Hearing before Bankruptcy Court on Remand

28

2 James

3 to rely heavily on them for that because
4 we didn't have the expertise to cope
5 with the interest equalization tax matter
6 which was a \$1 million claim by the
7 government of the United States.

8 Since I rendered a great deal
9 of time and service in this estate, I
10 can tell you I had to lean heavily on
11 his people and there was very little that
12 I could contribute to the tax area and
13 very little that they were able to help
14 us with in the insolvency aspects of
15 the matter.

16 I would submit to you that
17 there is absolutely no duplication.
18 The only thing I can say is we were
19 fortunate in having some small amount
20 of background from the equity receiver-
21 ship with which to pick up the reins and
22 carry forward during the Chapter XI
23 proceeding.

24 Now, Your Honor has alluded
25 to the duplication or potential

1 January 28, 1975 Hearing before Bankruptcy Court on Remand 29

2 James

3 duplication in connection with examina-
4 tions of the Massiellos.

5 THE JUDGE: Before you go onto
6 that, Mr. Miller, still dealing with page
7 30 of the Seligson and Morris application,
8 there are hourly rates set forth there for
9 Prof. Seligson, Harvey Miller, yourself
10 and Mr. Fabrizio.

11 MR. MILLER: Yes.

12 THE JUDGE: I'd like to make
13 certain that those were rates being
14 charged at the time that the services
15 were being performed and that they are
16 not 1974 rates, when the application was
17 made.

18 MR. SELIGSON: Your Honor, I
19 can tell you this: They are definitely
20 the charges that we made at the time and
21 they are much less than we charge today
22 for similar services.

23 But let me also point out to
24 you. These are minimum charges that we
25 made at the time. That in most cases

2 James

3 where we got the results, as we did
4 in this case, we charged a private
5 client considerably more than these
6 minimum charges.

7 We gave the estate the benefit,
8 the assignees estate the benefit of the
9 minimum charges that we made at that time.
10 We did not ask this court to give us
11 anything more than we felt we were en-
12 titled to get, bearing in mind the
13 economic spirit of the Bankruptcy Act,
14 in connection with allowances.

15 We did not come in here and
16 say, we are entitled to \$50,000, anti-
17 cipating that you would feel it
18 necessary to make some reduction and
19 we'd get at least the \$35,000 or whatever
20 it was that we asked for here.

21 We have always followed this
22 policy, Your Honor, here and everywhere
23 where we have filed applications for
24 allowances, in New Jersey and elsewhere.

25 We ask for precisely what we

James

2
3 think we are entitled to get and no
4 more. We have been fortunate enough
5 that the courts have recognized that
6 fact to know that we do not inflate our
7 applications.

8 You will notice I only charged
9 for fifteen hours of my time in the
10 Chapter XI proceedings. I devoted much
11 more time than that. I must say I don't
12 feel that it is necessary to charge if
13 I will telephone someone and give them
14 some advice, unless it's a very important
15 matter; I just forget about it.

16 I had occasion to do this on
17 many, many times in this case, as I do
18 in most cases.

19 The estate is getting the
20 benefit of that attitude, the attitude
21 that I have towards the allowances in
22 the administration on bankruptcy cases.

23 THE JUDGE: Thank you, Professor.

24 MR. MILLER: I will tell you,
25 Your Honor, that so far as the time rates

1 January 28, 1974 Hearing before Bankruptcy Court on Remand³²
2 ~~James~~

3 are concerned in both proceedings, these
4 were lower, on the low side of our time.

5 They were adjusted after that.
6 We did not adjust in this application.
7 I testified under oath that fact in our
8 last hearing before Your Honor. I gave
9 Your Honor the figure to which they were
10 adjusted.

11 Now, in connection with the
12 Massiellos, Mr. Liman has indicated we
13 had-- we had nothing to do with the
14 Massiellos during the equity receiver-
15 ship. He has indicated the extent to
16 which he had contact.

17 I would say that the first
18 time there was a real investigation of
19 the Massiellos and of the charges that
20 were made against the bankrupt by them
21 of the fund that were transferred, of the
22 ownership of various property, the yacht,
23 the airplane, of the payment of bills to
24 Saks Fifth Avenue for thousands, florists,
25 barber shops, beauty parlors; you name it,

1 Januray 28, 1975 Hearing before Bankruptcy Court on Remand 33
2 James

3 they charged it.

4 The first time that investigation
5 was developed was during the Chapter XI
6 proceedings. That investigation occurred
7 in the form of examinations under then
8 Section 21A of the Bankruptcy Act, before
9 Judge Lowenthal.

10 I know I participated, I examined,
11 -- I examined Mr. Massiello, I examined
12 his wife, Olive Massiello and I examined
13 his sons, James Massiello and Anthony
14 Massiello.

15 I was trying to remember Mr.
16 Massiello's name, Samuel.

17 I examined them at length and
18 that examination bore the fruits, to wit:
19 the manner in which the yacht was acquired,
20 the ownership of the airplane by the son,
21 the Rolls Royce owned by the son.

22 I also examined into trans-
23 actions with Bruns Nordeman & Co. in
24 regard to the transfer of over \$700,000
25 of securities from the bankrupt to Bruns

1 January 28, 1975 Hearing before Bankruptcy Court on Remand 34
James

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Nordeman in the name of the youngest
4 son; all of which occurred in a six-
5 week period.

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The only reason we didn't
pursue those examinations further was
that by the time we got from July to
December, it was apparent that there
was going to be an adjudication.

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Judge Lowenthal suggested that
we defer any further examinations until
the adjudication and the appointment of
a trustee.

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It is in the record before this
court. So I would say that as far as
we are concerned, we did not duplicate
what Paul, Weiss did and once we were
out, we couldn't have duplicated any
of it.

21

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I know the others will speak
for themselves on the subject.

23

24

Did you want to add anything?

25

MR. SELIGSON: No.

MR. MILLER: Now, the last

1 January 28, 1975 Hearing before Bankruptcy Court on Remand
2 James

38

3 could make a record in proceedings
4 before Your Honor.

5 As far as I know, that is the
6 only thing we had to do with it.

7 The basic job was done by the
8 accountants. We were not pulling the
9 records apart. We just had to give them
10 some guidance.

11 THE JUDGE: Would you direct
12 your attention to the application of
13 Weil, Gotshal & Manges and advise the
14 court whether or not there was any pos-
15 sible duplication between the applica-
16 tion of Seligson and Morris and the
17 Weil, Gotshal firm.

18 MR. MILLER: That is perhaps
19 the easiest thing to answer in the
20 whole thing.

21 On December 1, 1969, the firm
22 of Seligson and Morris went into liquida-
23 tion, in effect.

24 It phased out of existence.
25 Three -- four people from that firm

1 January 28, 1975 Hearing before Bankruptcy Court on Remand 39

2 James

3 joined the firm of Weil, Gotshal &
4 Manges. Professor Seligson headed the
5 team and Harvey, Miller and myself and
6 William Fabrizio also joined the firm.

7 Harvey Miller is a partner and
8 Bill Fabrizio is an associate. We were
9 the only ones familiar with this pro-
10 ceeding and in effect, although we
11 changed addresses, we continued to render
12 the services to the Chapter XI receiver
13 that we had rendered at Seligson and
14 Morris.

15 There was no more Seligson and
16 Morris to duplicate. It was just a
17 change of name and address and that's
18 all. We just continued the same identi-
19 cal services we had been rendering at a
20 different location, until the date of
21 adjudication.

22 MR. SELIGSON: Your Honor,
23 as to the rates, the rates that are
24 charged are the minimum rates that
25 prevailed at that time.

1 January 28, 1975 Hearing before Bankruptcy Court on Remand 40

2 James

3 THE JUDGE: I was just
4 noting the rates on page 6 of the
5 Weil, Gotshal application and I notice
6 that Alan Miller's rates during that
7 period, while they had been \$55 in the
8 Chapter XI proceeding under Seligson
9 and Morris, proceed from \$55 to Weil,
10 Gotshal to \$60, to \$65.

11 I gather those were firm
12 increases.

13 MR. MILLER: Absolutely.

14 MR. SELIGSON: That's right.

15 MR. MILLER: In fact, that
16 demonstrates for your Honor the reason-
17 ableness of the rates of Seligson and
18 Morris because we -- when we joined a
19 much larger firm, they had to evaluate
20 the rate basis on which we should be
21 placed.

22 This was exactly what happened.
23 These are the rates that went in for
24 every case.

25 THE JUDGE: The same is true of

1 January 28, 1975 Hearing before Bankruptcy Court on Remand 41

2 James

3 Harvey Miller progressing from \$75 to
4 \$85 to \$90 an hour.

5 MR. MILLER: That is correct.

6 Again, that just demonstrates
7 exactly the same thing. There was a
8 period -- an initial rate and -- the
9 determination was made and then a re-
10 vision of that rate.

11 MR. SELIGSON: As time went on
12 these young men become older men and
13 more experienced in this field and
14 their hourly rates was higher than the
15 rate charged when they were with
16 Seligson and Morris.

17 THE JUDGE: Mr. Fabrizio, he
18 remained at \$35?

19 MR. MILLER: He was not admitted
20 to the bar at the outset and became
21 admitted right at the end of the time
22 we were involved in the proceeding.

23 THE JUDGE: Is there anything
24 else you want to add?

25 MR. MILLER: I would stand on

AMENDED CERTIFICATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

Caption Omitted :

-----x

AMENDED CERTIFICATE AUTHORIZING INTERIM
AND FINAL ALLOWANCES PURSUANT TO RULE 16(c) OF
THE BANKRUPTCY RULES, S.D.N.Y.

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK:

There are now before me on remand from District
Judge Metzner applications for interim and final allowances
pursuant to the authority conferred by Rule 16(c) of the
Bankruptcy Rules of this District. On the basis of that re-
mand the court conducted further hearings relevant to the
issue as to the reasonableness of the compensation sought
and the recommendations to be made.

It is unnecessary in this amended certificate to re-
catalog the precise nature of the services rendered inasmuch
as they are set forth with more than ample particularity in the
applications themselves. I have once more reviewed those ap-
plications in light not only of my knowledge of the case in
the period since I took over those cases from the dockets of
now deceased Herbert Loewenthal, but I have also considered
the docket sheets themselves and as much of the file as I could

Amended Certificate

in order to get the flavor of what this case entailed and what the nature of the services were in light of all relevant criteria to proper administration. I have considered, therefore, the relevant criteria as set forth in the decisions among other courts of this circuit, In re: Mabson Lumber Co. Inc. 394 F.2d 23 (2d Cir. 1968), In re: Walfeld 345 F.2d 676, In re: General Economics Corp. 360 F.2d 762.

At the hearing which I called pursuant to the remand, additional factors were inquired into: First, the services of John Colins [sic] in his capacity as Equity Receiver and Receiver in Chapter XI proceedings covering approximately one year were reviewed in light of the amount requested for compensation and his representation that he was a working receiver not a passive one. Second, each applicant for compensation for legal services was asked to comment on that part of its application relating to investigations or interrogations of members of the Massiello family. The court was attempting to determine the necessity for the many contracts with family members and whether there was duplication or overlapping of such services. Third, the applicants Paul, Weiss, Rifkind and Seligson and Morris were asked to explain the reasons for the change in positions from General Counsel to Special Counsel when the Equity Receiver became the Receiver in

Amended Certificate

Chapter XI proceedings. Fourth, the applicants were also asked to discuss their application for legal services relating to the collection, examination and collating of the James Anthony Co. records so the court could satisfy itself that legal services were performed and not work that was or could have been performed by accountants. Finally, the applicants were asked to discuss the hourly rates contained in their applications and to state whether those were the rates being charged by them in bankruptcy matters at the time the services were rendered or at the time the application was made.

Applying all relevant criteria and mindful of the fact that the criteria in determining fair allowance are a composite, no single element can be considered alone. Thus, for example, hours are but one element to be considered. The court must also consider the diligence of counsel, the ability of counsel to achieve in shorter time through his competence what might be achieved elsewhere at a vastly more increased expenditure of hours and the results accomplished. Moreover I incorporate herein by reference the content of the original certificate which was given to Judge Metzner at the time he heard the matter and upon which he directed this remand.

In sum - I am satisfied on the basis of the applications, the material I have considered in our files, and the content of the remanded hearing that the fair value of the services of the applicants I recommend are as follows:

That the applicant John Collins be allowed compensation as Equity Receiver and Receiver in Chapter XI proceedings

Amended Certificate

in the amount of \$20,000 - (requested \$29,301.07).

That the applicant Paul Weiss Rifkind Wharton & Garrison in their capacity as General Counsel to the Equity Receiver and Special Counsel to the Chapter XI Receiver, be allowed compensation in the amount of \$30,000 - (requested \$36,984.00).

That the applicant Seligson & Morris in their capacity as Special Counsel to the Equity Receiver and General Counsel to the Receiver in Chapter XI be allowed compensation in the amount of \$30,000 - (requested \$33,421.25).

That the applicant Weil, Gotshal & Manges, in its capacity as General Counsel to the Receiver in Chapter XI proceeding and successor to Seligson & Morris be allowed compensation of \$6,000 - (requested \$11,042.00).

That the applicant Irving Schneider in his capacity as Special Counsel to the Debtor-in-Possession be allowed compensation in the amount of \$6,000 - (requested \$10,000).

That the applicant Hertz, Herson & Company, accountants to the Receiver under Chapter XI proceedings be allowed an interim allowance of \$35,000 without prejudice to apply for additional compensation if it can establish that the services performed in excess of this amount were authorized or can be authorized in an amount exceeding the \$50,000 presently fixed as maximum compensation.

That the applicant Sobel Weismann Co., accountants to the trustee in bankruptcy be allowed an additional interim allowance of \$35,000.

Amended Certificate

That the applicant Alex Rosen in his capacity as Special Counsel to the trustee in bankruptcy be allowed as an interim of \$45,000 - (requested \$135,000).

That the applicant Neil Morrit, General Counsel to the trustee be granted an interim allowance of \$40,000 - (requested \$135,000).

APPLICATION OF PEAT, MARWICK, MITCHELL & CO.
ACCOUNTANTS TO THE EQUITY RECEIVER

Because of a filing error this application was not included in this court's recommendation for Certification of Allowances dated December 4, 1974.

I have examined this application carefully and reviewed the services described therein which were performed during the period from March 27, 1969 through July 3, 1969. This applicant was the first of a series of accounting firms to perform services in this matter. Like the other accountant applicants, this one complains that the books and records were in clerical shambles, that they were strewn about the bankrupt's offices in total disarray. It summarized the status of the records as having been the worst set of records of a broker-dealer ever examined by it.

In spite of that handicap it recites the details of its investigation of brokerage accounts and open transactions of the debtor. It prepared Schedules of Fails to deliver and Fails to receive involving 677 brokers who had open transactions. It also recites the details of its investigation of Customer Security positions and Customer

Amended Certificate

Cash balances. This activity involved contacts with 249 customer accounts covering the period from December 1, 1968 through February 1969. It claims to have spent 571 hours of professional time on this matter and seeks an allowance of \$6,510.95. I am satisfied that the work performed was necessary to assist the Equity Receiver in carrying out his obligations and it was professionally done in a short period of time because of the applicant's skill in this field.

Under all the circumstances I recommend payment in the amount of \$6,000.

THE FOREGOING IS RESPECTFULLY SUBMITTED.

JOHN J. GALGAY
Bankruptcy Judge

DATED: NEW YORK, NEW YORK
FEBRUARY 26th, 1975

ORDER APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter	:	
of	:	
JAMES ANTHONY & CO., INC.,	:	69 B 425
Bankrupt.	:	

-----x

METZNER, D.J.:

This is an application for allowances. The bankrupt was originally placed under an equity receivership from which it went into Chapter XI reorganization proceedings and then into bankruptcy.

Over a million dollars is in the hands of the trustee and there is presented for allowances the requests of the equity receiver who later became receiver in the Chapter XI proceedings, his counsel and special counsel, three firms of accountants, and counsel and special counsel to the trustee. The requests by the latter and one of the accountants is for interim allowances. The other requests are for final allowances.

After the court had reviewed the original application and the report of the bankruptcy judge, it

Order Appealed From

requested the latter to review the application with a view to ascertaining duplication of effort, if any, and the scale of fees as of the date the services were rendered, not as of the date of the application. The total of the original requests amounted to about \$430,000. The original recommendation for allowances totaled about \$335,000. The amended recommended allowances now amount to about \$250,000.

The court has again reviewed the applications and the transcript of the second hearing before the bankruptcy judge and his amended certificate. The recommended allowances contained in the amended certificate are approved.

So ordered.

Dated: New York, N.Y.
March 3, 1975

CHARLES M. METZNER

U. S. D. J.

MOTION FOR HEARING AND RECONSIDERATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re :

JAMES ANTHONY & CO., INC. :

Bankrupt. :

Record
Bankruptcy No.
69 B 425

-----X

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed affidavit of Harvey R. Miller, sworn to March 18, 1975, and all prior proceedings heretofore had herein, the undersigned will move before the Honorable Charles M. Metzner, District Judge, in Room 2201, United States Court House, Foley Square, New York, New York, on the 31st day of March, 1975 or as soon thereafter as counsel can be heard, for hearing and reconsideration of this court's order, dated March 3, 1975, approving the Amended Certificate Authorizing Interim and Final Allowances pursuant to Rule 16(c) of the Bankruptcy Rules of the United States District Court for the Southern District of New York, and for such other and further relief as is just.

Dated: New York, New York
March 19, 1975

Weil, Gotshal & Manges
Attorneys for
JOHN T. COLLINS, Receiver
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

By *Harvey R. Miller*
A Member of the Firm

Motion for Hearing and ReconsiderationTO:

NEIL J. MORITT, ESQ.
600 Old Country Road
Garden City, N.Y. 11530
Attorney for Trustee

HERTZ, HERSON & COMPANY
Successor to B. Bernard
Greidinger Co.
2 Park Avenue
New York, N.Y.
Accountants to Receiver

ALEX L. ROSEN, ESQ.
225 Broadway
New York, N.Y. 10007
Special Counsel for Trustee

SOBEL, WEISMANN & CO.
formerly Sobel, Tuteur, Weismann,
Reiss & Dobis
401 Hackensack Avenue
Hackensack, New Jersey

JOHN T. COLLINS
301 Park Avenue
New York, N.Y.
Equity & Chapter XI Receiver

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 Park Avenue
New York, N.Y. 10022
Gen. Counsel for Equity Receiver &
Special Counsel for Chap. XI Receiver

SELIGSON & MORRIS, ESQS.
c/o Weil, Gotshal & Manges
767 Fifth Avenue
New York, N.Y.
(391 297)
Attorneys for Receiver - Chap. XI

IRVING SCHNEIDER, ESQ.
30 Vesev Street
New York, N.Y. 10007
Attorney for Debtor

Motion for Hearing and Reconsideration

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re :

JAMES ANTHONY & CO., INC., : Bankruptcy No. 69 B 425

Bankrupt. :

-----x

AFFIDAVIT FOR HEARING AND RECONSIDERATION OF
ORDER APPROVING INTERIM AND FINAL ALLOWANCES
OF COMPENSATION AS TO WEIL, GOTSHAL & MANGES

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HARVEY R. MILLER, being duly sworn, deposes and
says:

1. I am a member of the law firm of Weil, Gotshal & Manges, which acted as attorneys for John T. Collins, the receiver appointed in this case and in the equity receivership case which antedated the commencement of bankruptcy proceedings (the "Receiver"). I am personally familiar with all of the facts hereinafter set forth.

2. This affidavit is submitted in support of a motion for a hearing and reconsideration of an order of the court dated March 3, 1975, approving an amended certificate authorizing interim and final allowances of compensation in this case. The amended certificate dated February 26, 1975, was rendered by Bankruptcy Judge John J. Calgay. No hearing

Motion for Hearing and REconsideration

was had before this Court in connection with that amended certificate and notice thereof was not received by my law firm until March 3, 1975, the date upon which this Court approved the amended certificate.

THE STATUS OF WEIL, GOTSHAL & MANGES

3. On February 28, 1969, John T. Collins was appointed as receiver for all of the assets and properties owned, beneficially or otherwise, by James Anthony & Co., Inc. (the "Bankrupt") in an action initiated in the United States District Court for the Southern District of New York, entitled Securities and Exchange Commission v. James Anthony & Co., Inc. and Samuel Masiello, 69 Civ. 797.

4. On June 20, 1969, the Bankrupt, with permission of the Receivership Court, filed with the Bankruptcy Court a petition for an arrangement under Chapter XI of the Bankruptcy Act. Thereafter, and on July 3, 1969, Mr. Collins was appointed as Bankruptcy Receiver for the Bankrupt pursuant to an order of the Honorable Constance Baker Motley, United States District Judge. The bankruptcy case was referred to the then Referee in Bankruptcy Herbert Loewenthal.

5. During the period March 3, 1969 to December 1, 1969, the law firm of Seligson & Morris was authorized to represent the Receiver, first as special counsel in the equity receivership case and thereafter under a general retainer in the bankruptcy case, as described in an order of the Bankruptcy

Motion for Hearing and Reconsideration

Court dated July 15, 1969.

6. Effective December 1, 1969, the law firm of Seligson & Morris was dissolved. The attorneys at Seligson & Morris who were engaged in the rendition of services to the Receiver, Charles Seligson (partner), Harvey R. Miller (partner), Alan B. Miller (associate) and William R. Fabrizio (associate), became associated on December 1, 1969, with Weil, Gotshal & Manges. Mr. Seligson became Counsel to Weil, Gotshal & Manges and I became a partner of that firm. Messrs. Alan B. Miller and William R. Fabrizio became associates of Weil, Gotshal & Manges and subsequently the said Mr. Miller became a partner of that firm. Upon the dissolution of Seligson & Morris, the Receiver promptly applied for authorization to engage Weil, Gotshal & Manges in the place and stead of Seligson & Morris so as to provide a continuity of services on behalf of the bankrupt estate by the same persons who were intimately familiar with the administration of the bankrupt estate and then engaged in an investigation of its affairs and the prosecution of claims on behalf of said estate.

7. Weil, Gotshal & Manges was authorized by an order of the Bankruptcy Court to represent the Receiver and did render professional services to the Receiver from December 1, 1969 on a regular and consistent basis until an order of adjudication was entered in the pending Chapter XI case and the Receiver was superseded by the appointment and qualification

Motion for Hearing and Reconsideration

of a trustee in bankruptcy. Thereafter, Weil, Gotshal & Manges rendered services in relationship to the completion of the Receiver's duties and as requested by the Trustee in Bankruptcy. The nature and extent of the professional services rendered by Weil, Gotshal & Manges are set forth in the application for allowance of compensation filed with the Bankruptcy Court, dated January 31, 1974. That application must be read together with the application for an allowance of compensation filed by Seligson & Morris, dated January 30, 1974.

WEIL, GOTSHAL & MANGES AS AN
APPLICANT FOR COMPENSATION

8. As indicated above, in January of 1974 the law firms of Seligson & Morris and Weil, Gotshal & Manges prepared and thereafter filed with the court their respective applications for allowances of final compensation for professional services rendered in connection with this case. Over four years had passed since the commencement of the case during which time no compensation or reimbursement of disbursements, of any kind, had been received by either law firm. At or about the same time, applications for compensation were prepared and served by other parties in interest including, the Receiver, Messrs. Paul, Weiss, Rifkind, Wharton & Garrison, as attorneys for the Equity Receiver and special counsel to the Bankruptcy Receiver, Alex L. Rosen, as special counsel for the Trustee in Bankruptcy, Neil Moritt, general counsel

Motion for Hearing and Reconsideration

to the Trustee, Irving Schneider, attorney for the Bankrupt, and the certified public accountants who rendered services to the Receiver and Trustee, respectively.

9. A hearing to consider the various applications for allowances of compensation was held before the Bankruptcy Court on June 4, 1974, upon notice to all creditors and parties in interest. The hearing was held before the Honorable John J. Galgay, Bankruptcy Judge, who had succeeded Referee Loewenthal. At the hearing, the Bankruptcy Court received testimony by various applicants and reserved decision as to each application for allowance of compensation.

THE APPLICATION FOR ALLOWANCE OF
COMPENSATION FILED BY WEIL, GOTSHAL & MANGES

10. The application for an allowance of compensation filed by Weil, Gotshal & Manges requested an allowance of final compensation in the sum of \$11,000, together with reimbursement of disbursements in the sum of \$338.21. The application reflects that during the time that Weil, Gotshal & Manges acted as general counsel for the Receiver it had expended 184 hours in the rendition of professional services and in continuation of the services rendered by Seligson & Morris, all of which had contributed to the moneys and other properties which were turned over to the Trustee in Bankruptcy by the Receiver aggregating almost \$1 million. Annexed to the application is a 19-page letter describing the scope and nature of the services rendered in the

Motion for Hearing and Reconsideration

representation of the Receiver by Weil, Gotshal & Manges and its predecessor general counsel. These services materially benefited the bankrupt estate.

11. On December 4, 1974, five years after the retention of Weil, Gotshal & Manges, the Bankruptcy Judge rendered his certificate pursuant to Bankruptcy Rule 16(c) recommending certain allowances of compensation for services rendered on behalf of the bankrupt estate.

12. The said certificate dealt with the following applications and made the recommendations of compensation hereinafter set forth:*

<u>Name of Applicant</u>	<u>Compensation Requested</u>	<u>Compensation Recommended</u>
John T. Collins, as Equity Receiver and Bankruptcy Receiver (final compensation)	\$29,301.07	\$29,301.07
Paul, Weiss, Rifkind Wharton & Garrison, Attorneys for the Equity Receiver and Special Counsel to the Bankruptcy Receiver (final compensation)	\$36,984.00	\$36,984.00
Seligson & Morris, Attorneys for Bank- ruptcy Receiver and Special Counsel to Equity Receiver (final compensation)	\$33,421.25	\$33,421.25

* The certificate also dealt with applications for compensation requested by certain certified public accountants. These applications were not affected by the amended certificate which is discussed infra and no further reference will be made to those applications.

Motion for Hearing and Reconsideration

<u>Name of Applicant</u>	<u>Compensation Requested</u>	<u>Compensation Recommended</u>
Weil, Gotshal & Manges Attorneys for Bankruptcy Receiver (final compensation)	\$11,000.00	\$11,042.50
Irving Schneider, Attorney for Bankrupt (final compensation)	\$ 7,000.00	\$ 7,000.00
Alex L. Rosen, Special Counsel for Trustee in Bankruptcy (interim compensation)	\$125,000.00	\$70,000.00
Neil Moritt, General Counsel to Trustee in Bankruptcy (interim compensation)	\$125,000.00	\$70,000.00

13. In respect of the application of Seligson & Morris, the certificate stated, in part:

"The professional services performed were of extremely high quality and the results obtained would fortify that view." (Certificate, page 13)

The persons who rendered those services continued to render the services required by the bankrupt estate subsequent to December 1, 1969, but as representatives of Weil, Gotshal & Manges.

14. In respect of the application of Weil, Gotshal & Manges, the Bankruptcy Judge stated:

"An examination of this application [of Weil, Gotshal & Manges] and the Seligson & Morris application offers sufficient support for the allowances sought."

Accordingly, it was recommended that Weil, Gotshal & Manges be allowed compensation in the amount requested.

15. No creditor of the bankrupt estate objected

Motion for Hearing and Reconsideration

to the applications for allowances of compensation filed by Seligson & Morris and Weil, Gotshal & Manges and no person appeared in opposition or objection to the certificate rendered by the Bankruptcy Judge dated December 4, 1974, when that certificate came on for hearing before this Court on December 10, 1974. The certificate was remanded to the Bankruptcy Judge for further consideration.

THE REMANDED PROCEEDINGS

16. Subsequent to the remand of the certificate dated December 4, 1974, a further hearing was held before the Bankruptcy Judge "relevant to the issue as to the reasonableness of the compensation sought and the recommendations to be made." The Bankruptcy Court received further testimony and thereafter rendered an amended certificate pursuant to Bankruptcy Rule 16(c), which amended certificate is dated February 26, 1975. The amended certificate was not placed upon the Miscellaneous Motion Calendar of this Court and no notice of hearing in connection therewith was given to any of the applicants who are the subject of the amended certificate.

THE AMENDED CERTIFICATE PURSUANT
TO BANKRUPTCY RULE 16(c) AND THE
RECOMMENDATIONS CONTAINED THEREIN

17. The amended certificate, dated February 26, 1975, represented a substantial revision of the original certificate dated December 4, 1974, in respect of the recommendations of compensation to be allowed to the Receiver

Motion for Hearing and Reconsideration

and the various attorneys who had filed applications for allowances of compensation. In each such case, the amended certificate recommended a reduction in the amount of compensation previously recommended and sought by the respective applicant. The differences between the original certificate and the amended certificate in respect of the parties affected thereby are hereinafter set forth:

<u>Name of Applicant</u>	<u>Amount Recommended in Original Certificate</u>	<u>Amount Recommended in Amended Certificate</u>
John T. Collins, as Equity Receiver and Bankruptcy Receiver	\$29,301.07	\$20,000.00
Paul, Weiss, Rifkind, Wharton & Garrison, Attorneys for the Equity Receiver and Special Counsel to the Bankruptcy Receiver	\$36,984.00	\$30,000.00
Seligson & Morris, Attorneys for the Bankruptcy Receiver and Special Counsel to Equity Receiver	\$33,421.25	\$30,000.00
Weil, Gotshal & Manges, Attorneys for Bank- ruptcy Receiver	\$11,042.50	\$ 6,000.00
Irving Schneider, Attorney for Bankrupt	\$ 7,000.00	\$ 6,000.00
Alex L. Rosen, Special Counsel for Trustee in Bankruptcy	\$70,000.00	\$45,000.00
Neil Moritt, General Counsel to Trustee in Bankruptcy	\$70,000.00	\$40,000.00

Motion for Hearing and Reconsideration

18. On March 3, 1975, on the same day that I received a copy of the amended certificate in the mail, this Court rendered its order approving the allowances of compensation recommended in the amended certificate. In so doing, this Court stated that after it had reviewed the original certificate, it has requested the Bankruptcy Court "to review the applications with a view to ascertaining duplication of effort, if any, and the scale of fees as of the date the services were rendered, not as of the date of the application." The court also noted what appears to be the crux of the purpose for the remand and the ratio decidendi of the approval of amended certificate, in the following manner:

"The total of the original requests amounted to about \$430,000. The original recommendation for allowances totaled about \$335,000. The amended recommended allowances amount to about \$250,000."

THE ALLOWANCE OF COMPENSATION AS FINALLY AWARDED
TO WEIL, GOTSHAL & MANGES DOES NOT REPRESENT THE
FAIR VALUE OF THE PROFESSIONAL SERVICES RENDERED

19. The compensation allowed to Weil, Gotshal & Manges by the order dated March 3, 1975, represents a reduction of approximately 45% from the amount of compensation originally recommended by the Bankruptcy Judge. While I am extremely cognizant of the necessity on the part of the Court to avoid any "vicarious generosity" in the granting of compensation in bankruptcy cases, I respectfully submit that the reduction from the original recommendation to the amount finally awarded is excessive and inequitable in the circumstances.

Motion for Hearing and Reconsideration

20. The amended certificate dated February 26, 1975, does not state any reason for the drastic reduction made in the amount of compensation requested by Weil, Gotshal & Manges. Although the Court's order of March 3, 1975 refers to its request that an ascertainment be made on duplication of effort and scale of fees, both said order and the amended certificate are silent as to any duplication of effort by Weil, Gotshal & Manges or any excessive scale of fees on its part.

21. During the period of its retention, Weil, Gotshal & Manges, as aforesaid, expended 184 hours of services required in the administration of the bankrupt estate. Based upon the compensation awarded by the Court those services are to be compensated at the rate of \$34 per hour. This is a rate which must be conceded to be substantially below that which would have been charged to a private client at the time the services were rendered and for which a private client would have paid at the time the services were rendered. In contrast, Weil, Gotshal & Manges has been required to wait over five years to receive any compensation at rates substantially below those in effect at the time the services were rendered. Moreover, during the five year period, there has been an approximate inflation rate of 35%. On that basis, the compensation approved by the Court, when received, would have a real value of less than \$24 per hour.

22. The inequity of the compensation granted to Weil, Gotshal & Manges is underscored when compared to the compensation allowed to the special counsel and general

Motion for Hearing and Reconsideration

counsel for the Trustee on an interim basis. The special counsel for the Trustee in Bankruptcy applied for compensation in the amount of \$125,000. The application filed by him states that during the course of his engagement he expended 1,270 hours. The original certificate recommended an allowance of \$70,000. The amended certificate recommended, and this Court approved, an interim allowance of \$45,000. Thus, the special counsel on an interim basis is to receive \$35 per hour for services rendered while my firm is to receive \$34 per hour as final compensation. A comparison of the compensation awarded to the general counsel for the Trustee on an interim basis likewise reflects the unfairness resulting from the very substantial reduction made in the amended certificate as to the compensation to be awarded to Weil, Gotshal & Manges.

23. It is also noted that no determination has been made as to the request for reimbursement of disbursements actually incurred by Weil, Gotshal & Manges in relation to the professional services rendered, which disbursements aggregate \$331.48. It is requested that reimbursement of such disbursements be allowed.

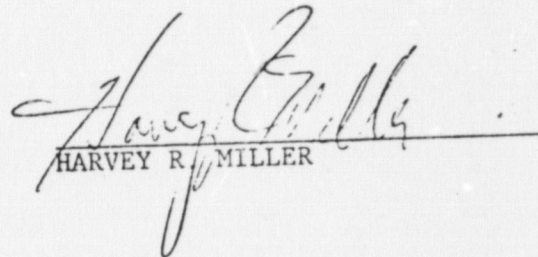
24. Neither the amended certificate nor the order of this Court set forth any basis justifying the reduction of over 45% in the amount requested as compensation by Weil, Gotshal & Manges and the amount allowed. The professional services rendered herein were of high quality and benefit to the bankrupt estate and its creditors. Applications for allowances of

Motion for Hearing and Reconsideration

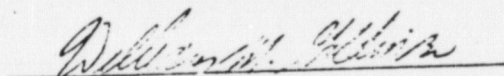
compensation in such circumstances should not be reduced for the sole purpose of establishing that attorneys should not be allowed awards of compensation in the amounts which they request. The test to be applied should be the value of the services, the skill with which they were rendered, the results achieved and the time expended. Based upon the applicable determinative factors, the compensation awarded is neither fair nor reasonable.

CONCLUSION

25. It is respectfully requested that the Court consider the award of compensation allowed to Weil, Gotshal & Manges and, if necessary, that a hearing be held for the purpose thereof and that the amount of compensation be increased consistent with applicable standards hereinabove set forth.


 HARVEY R. MILLER

Sworn to before me this
 18th day of March, 1975



WILLIAM M. GOLDMAN
 Notary Public, State of New York
 No. 31-400335
 Qualified in New York County
 Commission Expires March 30, 1978

Attorney for

U. S. DISTRICT COURT
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NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re :

JAMES ANTHONY & CO., INC., : Bankruptcy No. 69 B 425

Bankrupt. :

-----x

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Weil, Gotshal & Manges hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the order dated March 3, 1975, that pertains to the application for allowance of compensation made by Weil, Gotshal & Manges, as attorneys for the Receiver, and determines the amount of compensation allowed.

Dated: New York, New York
April 2, 1975

WEIL, GOTSHAL & MANGES
Attorneys for John T. Collins,
Receiver
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

By John T. Collins
A Member of the Firm

